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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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3 GOVERNMENT OF THE UNITED
STATES VIRGIN ISLANDS
Plaintiffs

4 v.

22 Civ. 10904 (JSR)

JPMORGAN CHASE BANK N.A.
Defendants

5 -----x

6 JANE DOE 1, Individually and on
behalf of all others similarly
situated,

7 Plaintiffs

8 v.

22 Civ. 10019 (JSR)

9 JPMORGAN CHASE & CO.,
Defendants

ORAL ARGUMENT

10 -----x

11 New York, N.Y.

12 March 16, 2023
4:30 p.m.

13 Before:

14 HON. JED S. RAKOFF

15 District Judge

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24 (Continued on next page)

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(In open court; case called)

DEPUTY CLERK: Will everyone please be seated and will the parties please identify themselves for the record.

MS. LIU: Good afternoon, your Honor. Mimi Liu on behalf of the U.S. Virgin Islands.

MR. QUIRK: Good afternoon, your Honor. Michael Quirk on behalf of the U.S. Virgin Islands.

MS. SINGER: Linda Singer, your Honor.

MR. EDWARDS: Good afternoon. Brad Edwards on behalf of Jane Doe.

MR. VILLACASTIN: Good afternoon. Andrew Villacastin on behalf Jane Doe and in both the JPM and Deutsche Bank cases.

MS. HENDERSON: Good afternoon. Brittany Henderson on behalf of Jane.

MS. ELLSWORTH: Good afternoon, your Honor. Felicia Ellsworth, Boyd Johnson and John Butts on behalf of JPMorgan Chase.

MR. HENNES: Good afternoon, your Honor. David Hennes and Andrew Todres from Ropes & Gray on behalf of the Deutsche Bank, and at the Court's invitation.

MR. SMITH: Good afternoon, your Honor. Patrick Smith for non-party Jordana Feldman.

MR. SULLIVAN: Your Honor, Brendan Sullivan for Jes Staley by invitation of the Court.

THE COURT: So thank you all for coming. I think we

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1 need to, with apologies to everyone, take whatever time is
2 necessary even into this evening, if necessary, to get
3 everything that's outstanding resolved so we could be
4 completely up to date. Plus it's been, what, at least three or
5 four days since I saw most of you, so I was really feeling
6 lonely and missing you.

7 So, in any event, here we are. Let's start with the
8 schedule. I just want to make sure that we have everything
9 properly scheduled. So the trial for Doe v. Deutsche Bank is
10 set to begin on August 8. The trial for both Doe v. JPMorgan
11 and Virgin Islands v. JPMorgan is scheduled to begin on
12 September 5.

13 Now, because we are just now hearing this week
14 arguments on the motions to dismiss the amended complaints,
15 then I think we need to move some of the interim dates. I have
16 already indicated in the arguments we heard earlier this week
17 that I will give you a bottom line rule at least by the end of
18 March, and that will be true of the argument we're going to
19 hear today as well.

20 So, against that background -- there's one other
21 complication, which is the third-party complaint that JPMorgan
22 has filed against Mr. Staley. But putting that third-party
23 complaint aside for one second, does anyone want to suggest new
24 dates for the completion of discovery and the like?

25 I'm not going to move the trial dates, so it's just a

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1 question of whether we need to, for example, previously all
2 discovery was to be completed by April 24 and class
3 certification reports were due on March 1, and the motions on
4 class certification were to be made and responded to in various
5 dates in March and April. We were going to have an oral
6 argument on May 12, and then there was argument leading up to a
7 final pretrial conference on June 12. I am happy to move any
8 and all of those dates, but not the trial date.

9 So does anyone want to make any suggestions in that
10 regard?

11 MS. SINGER: Linda Singer, your Honor. I'm happy to
12 open the bidding on this one.

13 So the U.S. Virgin Islands and the Doe plaintiffs had
14 previously been in touch with JPMorgan which had asked us about
15 extending the schedule. What we had proposed to them was
16 moving the deadline for plaintiffs' expert reports till the end
17 of April, which I think takes some of the pressure off some of
18 the discovery issues because depositions can then move back.
19 So that would be one suggestion. Obviously, we can't speak to
20 the class certification issues

21 THE COURT: Okay, anyone disagree with that?

22 MR. BUTTS: Your Honor, John Butts for JPMorgan. We
23 are happy to proceed on any schedule. The schedule that -- I
24 know you're asking this, with Mr. Staley's third-party
25 complaint aside, our interest is doing everything in one

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1 efficient shot, so I'm happy to answer questions in that
2 regard, but that's just something that would be considered.

3 THE COURT: Who is here for Mr. Staley?

4 MR. SULLIVAN: Brendan Sullivan your Honor.

5 THE COURT: Welcome back, Mr. Sullivan.

6 MR. SULLIVAN: Thank you, sir.

7 THE COURT: So when last you were here, my Court --
8 and I was talking to the jury after the verdict, and one of the
9 jurors said, "Was that really Brendan Sullivan?"

10 And when I told him that: Yes, it was the real McCoy,
11 he practically collapsed from enthusiasm right there on the
12 spot. So welcome back.

13 MR. SULLIVAN: Thank you, your Honor. You're always
14 very nice in the compliments, but you always deny my motions.

15 THE COURT: Seems like the fair thing to do.

16 Anyway, what is the -- when is your answer due in the
17 Staley matter?

18 MR. SULLIVAN: 60 days, your Honor.

19 THE COURT: 60 days from?

20 MR. SULLIVAN: From March 8 or 9.

21 Just so the Court knows, I think on Wednesday,
22 March 8, I was informed Mr. Staley would be sued by JPMorgan.
23 They asked if I would accept service. I did accept service on
24 March 9. On Friday, March 10, I did receive the Court's
25 invitation to appear today for purposes of scheduling.

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1 THE COURT: I'm sorry, I should have made it the
2 evening of March 9, but I'm a little belated.

3 MR. SULLIVAN: The only important day to avoid any
4 important conflict is tomorrow. As you know, it's St.
5 Patrick's Day. It's a holy day.

6 THE COURT: Everyone knows that, but I am not sure
7 that you should bring religion into the courts.

8 MR. SULLIVAN: That is true.

9 Your Honor, just to fill out the situation, so I'm
10 here today to announce that I know nothing about this case.
11 Nothing. I don't know about the discovery. I haven't read the
12 pleadings. I haven't seen any discovery or subpoenas. I don't
13 know the name of the plaintiff. And I think I'm probably
14 entitled to a *Guinness Book of World Records* in having appeared
15 the quickest between the date of suit and today, which is eight
16 days, so --

17 THE COURT: Well, I appreciate that.

18 Now, last I heard your law firm, whose excellence is
19 well-known throughout the United States, held itself out as
20 being able to act promptly and efficiently on virtually any
21 matter brought to it.

22 MR. SULLIVAN: That is absolutely true.

23 THE COURT: So you don't really need 60 days, right?

24 MR. SULLIVAN: No, I really don't, but I'm not going
25 to waive the 60 days.

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1 Let me be serious for a moment, your Honor. There is
2 only one thing you're concerned about is getting cases properly
3 tried and all parties having an opportunity to be fairly
4 prepared and heard in your court. There is no question about
5 that.

6 I come late to this, and there has to be a major
7 adjustment. I am -- frankly, if this was a brand new case and
8 we were all arriving, I would say based on my experience, the
9 minimum trial date should be March of '24, just 12 months, 12
10 months. Maybe that can be cut back. My point is, your Honor,
11 there is apparently an enormous amount to do. Some lawyers
12 have been in these cases for more than a decade. This is new
13 to us, and we need the proper time to prepare.

14 So according to Rule 4, we do have 60 days, and I
15 don't anticipate filing until that time. And I would ask the
16 Court's consideration given our arrival in the case to consider
17 moving the trial date closer to March of 2024 than the day
18 after Labor Day 2023.

19 THE COURT: Well, see, against that is the Court's
20 perception, which I have repeated perhaps too often for 27
21 years, which is that if there is one major problem with the
22 American civil justice system, it's delay: Endless delay,
23 expensive delay, delay that is not only bad for the parties but
24 is bad for the cause of justice. And while this case has its
25 factual minutiae, legal issues are not nearly as complex as in

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1 many cases that come before the courts of the Southern District
2 of New York. So there is no way I am going to push this case,
3 the trial of this case off or these cases off to March of 2024.
4 And I'm reinforcing that belief by the expertise and the
5 resources that all the firms involved in these cases have.

6 But I would, in light of your late entry, consider,
7 and in addition to, of course, giving you at least one day of
8 delay for St. Patrick's Day, consider a later date.

9 MR. SULLIVAN: May I mention one more thing that could
10 be a factor for the Court?

11 THE COURT: Yes.

12 MR. SULLIVAN: I have a trial ten weeks from now in
13 criminal court presided over by Judge Denny Chin, and he has
14 set aside the entire month of June for that trial. And I know
15 it may not be --

16 THE COURT: An entire month?

17 MR. SULLIVAN: Yes, your Honor. You should talk to
18 him about speeding it up perhaps.

19 THE COURT: I intend to do that.

20 MR. SULLIVAN: The trial starts jury selection May 30,
21 and the judge had identified every day of trial, there are some
22 half days, and the last day he has on his calendar is June 28.

23 THE COURT: What about evenings and weekends.

24 MR. SULLIVAN: That's fully occupied, as you know,
25 your Honor.

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1 THE COURT: So let me ask one other question,
2 something that I really reserved on earlier when these cases
3 were first presented.

4 But let me ask counsel in the Deutsche Bank case, what
5 about consolidating that trial with the trial of the other
6 cases? What would be in it for you, so to speak, is your trial
7 is now due to start August 8, and nothing involving Mr. Staley
8 and his counsel implicates anything about that date; but if it
9 were one trial of all these cases, which I think also makes a
10 lot of sense, then I would be willing to move your trial to a
11 consolidated trial date of -- and I was beginning to explore
12 that with Mr. Sullivan, but that would probably be October,
13 November, something like that.

14 So what about that?

15 MR. HENNES: Your Honor, David Hennes from Ropes &
16 Gray on behalf of Deutsche Bank. It's an issue we haven't
17 considered in the last several months. I don't think we
18 thought it made sense at the time to do that, given the
19 differing time periods in which --

20 THE COURT: I understand why, and that's why initially
21 I set two different trials, and I understand those arguments.
22 But, on the other hand, you might prefer to balance that
23 against the advantage of having a later trial.

24 MR. HENNES: That's right, your Honor, and I would
25 like the opportunity to talk to client about that. It's an

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1 important issue.

2 THE COURT: Well, that's fine. So we'll leave your
3 trial date where it is for now. We'll set a date with all
4 other parties for an extended trial date, and can you let me
5 know by Tuesday whether you prefer the extended trial date?

6 MR. HENNES: I will, your Honor. Can I raise one
7 other issue as we are thinking about this?

8 There are many overlapping issues in this case, both
9 those of fact of discovery and legal arguments, as you've heard
10 from the arguments on Monday, and there are some overlapping
11 issues. So we do believe it makes sense to keep the schedules
12 linked. I will get back to you on the trial date, but in terms
13 of any dates that move, it makes sense to keep the cases on the
14 same track.

15 THE COURT: I agree with that, but I wasn't planning
16 to move discovery -- excuse me -- I wasn't proposing to move
17 discovery beyond the trial date we had originally set. Now I
18 see that, that is maybe a little bit -- if we modify that at
19 all, I think we're only going to modify it as to discovery
20 involving Mr. Staley.

21 MR. HENNES: I think there will likely be some
22 adjustments proposed. I don't want to speak for counsel for
23 JPMorgan, but I think there will be some interim proposals of
24 moving some of the dates slightly. We think it makes sense for
25 all the cases or for both cases for that to happen.

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1 THE COURT: Okay. I think I -- I'll tell you what. I
2 didn't see this coming. It need to go grab my calendar. We
3 are going to take a two-minute break, not a three-minute break.

4 (Pause)

5 THE COURT: By the way, I meant to ask counsel for
6 JPMorgan, why didn't you serve Mr. Staley personally?

7 MR. BUTTS: We asked Mr. Sullivan to accept service.
8 He accepted service --

9 THE COURT: Well, so he could take advantage of the 60
10 days as opposed to the 30 days, but presumably you could still
11 serve Mr. Staley on Monday, in which case he would only have 30
12 days from that.

13 MR. BUTTS: If that moves things forward, we will do
14 that.

15 THE COURT: So that's a thought.

16 MR. SULLIVAN: I wish you were in my law firm. That
17 is a good thought. But the purpose of acting as counsel did is
18 to avoid the hassle of chasing people down and the cost of it.
19 That's the purpose of Rule 4. I think he acted perfectly
20 properly, and I responded very quickly to avoid that. And I
21 think -- we can't rewrite history now. We've been served, and
22 I would suggest --

23 THE COURT: Well, he's offered to serve your client on
24 Monday if I find it helpful to the Court in moving things
25 along, but I will for the moment -- I want to see how this

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1 plays out in terms of timing, but I will for the moment stick
2 to the 60 days.

3 MR. SULLIVAN: Thank you, sir.

4 MR. EDWARDS: Your Honor, may I be heard?

5 THE COURT: Yes.

6 MR. EDWARDS: Bradley Edwards on behalf of Jane Does.

7 Maintaining the trial date is extraordinarily
8 important to our clients, and so we would move -- if it is the
9 third-party complaint that is going to disrupt that, we would
10 move at this time to sever the third-party complaint and just
11 proceed on the way that -- on the track that we're all
12 scheduled to be on.

13 MS. SINGER: Your Honor, if I may add to that for the
14 U.S. Virgin Islands. Obviously, the Court has discretion under
15 Rule 14(a)(4) to sever and stay a third-party complaint in this
16 case.

17 THE COURT: Last I heard, I have that discretion even
18 without the rule.

19 MS. SINGER: Understood. In the same vein of service
20 and all things, understood. In this case, we do believe it's
21 in the interest of judicial economy, particularly because most
22 of the claims against Mr. Staley are contingent claims, and
23 this is an instance with proceeding with the case-in-chief
24 allowing the plaintiffs to proceed to trial.

25 And then, you know, if a secondary trial is needed on

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1 the claims between Chase and Staley, that can be done after the
2 case has proceeded with the benefit of the record, so that
3 Mr. Staley doesn't need to do any duplicative discovery.

4 THE COURT: All right. So before I hear from JPMorgan
5 on that, you don't have any objection to that, do you?

6 MR. SULLIVAN: No objection.

7 THE COURT: So let's hear from JPMorgan.

8 MR. BUTTS: We do have an objection, your Honor, and
9 we'd be happy to brief this. This is the first we're hearing
10 of it from the plaintiffs. Certainly, it's an area of
11 discretion, but the joinder of claims is strongly encouraged
12 and, concomitantly, quoting from your opinion in *Compania*
13 *Embotelladora*. Forgive my mispronunciation.

14 Severance should be granted only in exceptional
15 circumstances. There's five factors that go to that
16 exceptional circumstances test looking at essentially the risk
17 of prejudice and confusion of the issues.

18 1. Do the claims arise out of the same transaction
19 and occurrence? They absolutely do. All roads go through
20 Mr. Staley. He will be at the center of this case no matter
21 whether there's one or two.

22 2. JPMC's claims against him are derivative of the
23 claims that the plaintiffs have asserted against JPMorgan. In
24 fact, our complaint uses allegations directly from the
25 complaint in both cases.

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1 3. Judicial economy. This is literally a question of
2 one trial or two with all of the same witnesses.

3 4. Is severance necessary to avoid prejudice to any
4 party? It is not. Currently, we are on a schedule that has us
5 in for trial within ten months of the Doe plaintiffs' filings,
6 which is wonderful but a rare thing in --

7 THE COURT: You know, I think you've made good points
8 up till then. On that one, you're treading on thin ice because
9 in this Court's view, the overwhelming majority of cases
10 brought in the Southern District of New York, which are
11 typically brought as here by highly competent counsel, can be
12 tried within six months of when the complaint is brought. So I
13 think you've already had the benefit of more time than I
14 frankly would have normally allowed.

15 MR. BUTTS: Fair enough. I won't fight you on that,
16 your Honor.

17 Just pointing out the simple difference in the
18 calendar versus the trial date when it was scheduled, and the
19 filing of this case.

20 But I would like to come back to that point in a
21 slightly different way.

22 But factor five: Separate claims. Would they require
23 different witnesses and documentary proof? And here they would
24 be the same.

25 The thing I would like to say is that while Mr. Staley

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1 is a new party to the case, he is not new to this subject
2 matter. He has produced documents. He was scheduled for a
3 two-day deposition that is scheduled to begin on Thursday. He
4 produced documents to the United States Virgin Islands in their
5 indict case, which is the case against the Epstein estate that
6 has now settled. There has been a multi-year case in the
7 United Kingdom from the Financial Conduct Authority focused on
8 Mr. Staley and Mr. Epstein.

9 THE COURT: Who is representing Mr. Staley at the
10 deposition on Thursday?

11 MR. BUTTS: I understand it Mr. Sullivan was.

12 THE COURT: So surely someone in your firm has been
13 preparing if the deposition is next Thursday.

14 MR. SULLIVAN: Your Honor, there could be no further
15 difference between a witness's deposition than a party's.

16 THE COURT: Of course. I understand that. That
17 doesn't mean that you wouldn't prepared for a deposition.

18 MR. SULLIVAN: Certainly.

19 THE COURT: And that would require knowing a lot about
20 what the case is about.

21 MR. SULLIVAN: Your Honor, I asked JPMorgan for
22 documents. I don't remember the exact date. At least a month
23 ago. I forget when our first meeting was. We received no
24 documents. In that capacity, he's a witness. He's a -- I need
25 not underscore the difference between a witness and a party.

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1 We are now a party.

2 THE COURT: So now I come back to the question of
3 judicial economy, and that leads me once again to the other
4 case because the -- it clearly would be in the interest of
5 judicial economy to have one overall case that, yes, there are
6 important differences, but there are also important
7 similarities. And the legal issues on the whole are very
8 similar. So I wonder if you'd had any further thoughts on
9 that.

10 MR. HENNES: In the last three minutes, your Honor, I
11 have not, other than --

12 THE COURT: What a disappointment.

13 MR. HENNES: I knew I was going to disappoint you at
14 least once today. The only suggestion I might make -- and
15 obviously, it doesn't solve the efficiencies of consolidation,
16 which I will consider and be back to the Court in the timeline
17 which the Court requested after talking to the client -- is you
18 can keep the cases linked, meaning the trial can move to the
19 same time if ours is right before the JPMorgan trial as it
20 stands. They can both move, let's call it, in tandem, so ours
21 continues to go forth --

22 THE COURT: I don't think that's the same economy, but
23 thank you for mentioning that.

24 MR. HENNES: But I will be back with the client -- or
25 we will consider the issue and be back before your Honor.

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1 THE COURT: All right. Let me ask if any counsel
2 wants to -- maybe I should ask plaintiff's counsel first. How
3 long a trial -- assuming one overall trial of everyone, how
4 long a trial are we talking?

5 MR. EDWARDS: I think we've estimated between ten and
6 14 days.

7 THE COURT: I'm sorry?

8 MR. EDWARDS: We've estimated between ten and 14 days.

9 THE COURT: I think -- this is not a ruling because I
10 want to hear more about plaintiffs' arguments for sticking to
11 the current trial dates, but if we were to have one overall
12 trial, I could do it beginning October 23. I have one trial
13 already scheduled for that date, but I can move that other
14 case, and I am basically free for at least three weeks, which I
15 think would be more than enough even if it was one trial.

16 I don't think because of intervening stuff I have that
17 I could meaningfully move the trial involving Deutsche Bank
18 except into the slot that would be vacated by the trial slotted
19 for JPMorgan Chase.

20 So the alternatives are: Either we leave the trials
21 where they are, and we sever the case against Staley.

22 Second, we have one overall trial of everything
23 starting October 23.

24 Third, that we have one October 23, everything
25 involving JPMorgan Chase, including the Staley part of it, and

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1 that we move the Deutsche Bank case to September 5.

2 So I think those are the only three realistic options.

3 So I heard -- and I think it's not without some
4 force -- plaintiff's counsel's feeling desire to move this case
5 forward rapidly. It's a case of public importance. It's a
6 case that counsel have worked hard to meet the schedule of the
7 Court. On the other hand, I am not really clear why a modest
8 delay, essentially in the case of the JPMorgan case, a month
9 and a half, is really so prejudicial.

10 But let me hear anything further that plaintiff's
11 counsel wanted to say on that.

12 MR. VILLACASTIN: Good afternoon, your Honor. Andrew
13 Villacastin from Boies Schiller Flexner.

14 Jane Doe's preference is to keep the trial dates. I
15 think your inclination in the beginning of the hearing where
16 you noted that there was some play in the joints, you had the
17 ability -- we have a separate trial on June 20 and a two-month
18 delay before the beginning of trial. We have ten unripe
19 applications. We don't know how Mr. Staley's entering into the
20 case necessarily will affect the schedule, and I think we
21 should hear what he intends to do before we necessarily move
22 it.

23 You know, there was a mention of severance as well. I
24 think, you know, we can consider what the parties' intentions
25 are. The parties have not yet conferred on this, as I think

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1 Mr. Butts mentioned.

2 So just to state Jane Doe's preference --

3 THE COURT: Although counsel for JPMorgan, quite
4 rightly, cited the factors that the Court needs to take account
5 of, and most of those factors weigh against severance, JPMorgan
6 really has created this situation. JPMorgan surely knew from
7 its years of investigation what its views were with respect to
8 Mr. Staley. JPMorgan certainly could have served him
9 personally. I mean, I find that extraordinary that given the
10 deadline in this case, that that wasn't done. So in many ways
11 JPMorgan has created the problem with respect to Mr. Staley
12 from a timestamp point, and so maybe we should sever it as
13 simple justice or payback or however you like to -- that's Rule
14 97.3.

15 MS. SINGER: Household rule. My house, your Honor.
16 If I may --

17 MR. VILLACASTIN: Just to move quickly, sir.

18 THE COURT: Maybe I should interrupt you guys for a
19 minute to hear from JPMorgan. Yes?

20 MR. BUTTS: Your Honor, I will not take with you on
21 the issue with you on the piece with regard to service, right?
22 We did it as a professional accommodation to Mr. Sullivan.
23 We're happy to have him served personally tomorrow.

24 But this is not, respectfully, a problem of JPMorgan's
25 making. This is an issue of part of this case has gone on and

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1 part of what we have known about. And we had argument in front
2 of you. We moved the impleader date because we were trying to
3 get information from Ms. Doe about one of her allegations in
4 the complaint as to who is the powerful financial executive who
5 participated in her assault.

6 We asked that for awhile. Threatened to move to
7 compel multiple times. And only -- it was in
8 interrogatories -- it should have been answered in
9 interrogatories. And only 48 hours before we were coming upon
10 the -- 48 hours before we called asking for an extension of
11 that date when we were upon the original impleader date did
12 counsel finally share that it was that, she is alleging,
13 Mr. Staley.

14 What we asked for -- when we asked the Court for
15 permission to extend that was, this wasn't a question for
16 counsel, but for Ms. Doe, and our ability to hear from her in a
17 deposition where in an open courtroom the plaintiffs have been
18 sensitive about what is said in that deposition. I'm happy to
19 share it with you at sidebar, or if you'll permit me, but what
20 happened at that deposition fundamentally changed things, and
21 that's why we are here today.

22 MR. VILLACASTIN: If I could respond, your Honor? I
23 am the attorney who told them who that powerful financial
24 executive was. To be clear, the Court's schedule had a date
25 for joinder of additional parties by December 16, 2022. It was

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1 over our objection, I guess -- we may have consented for them
2 to enter an application, but we saw no reason for JPMorgan to
3 have additional time for that deadline.

4 To be clear, even assuming -- and this is an assertion
5 that JPMorgan itself did not know who that powerful financial
6 executive was, there were interim dates before that. The
7 conversation that Mr. Butts is referencing happened on
8 February 14, which is more than a month ago, right? More than
9 a month ago, and then he requested that verification in writing
10 the day after. I gave it to him in writing the day after. And
11 the verified interrogatory response was on February 23.

12 So you know that the third-party complaint is upon
13 information and belief. That's what they put into their
14 complaint. And they had that information and belief way before
15 now. And we see no reason on that basis to overturn the
16 schedule.

17 And to be clear, U.S. Virgin Islands, Jane Does, and
18 JPMorgan we meet and confer weekly. We talk about schedules
19 weekly. We've heard about extensions to schedules and, you
20 know, extensions to schedules have been discussed, and, you
21 know, for example, Jane Doe would consent to a reasonable
22 request for an extension, such as U.S. Virgin Islands mentioned
23 earlier on expert discovery, but it -- you know, we do not
24 consent necessarily to the timing of a third-party complaint
25 leading to the overthrowing a schedule, which is important to

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1 our clients, to be clear, and we dispute the other factors for
2 severance. You know, allegations specific to Mr. Staley are
3 not shared by our -- the entirety of our class, for example,
4 and we see no reason to prejudice their ability to get to trial
5 on their claims.

6 THE COURT: I'm sorry, other counsel wanted to be
7 heard?

8 MS. SINGER: Yes, your Honor. A few issues here.
9 Echoing your Honor's point that this is a problem of JPMorgan
10 Chase's own making. Their third-party complaint largely
11 recites the fact of the Doe complaint and the U.S. Virgin
12 Islands complaint, and, importantly, the United States Virgin
13 Islands complaint relies almost entirely on JPMorgan Chase's
14 own documents: Mr. Staley's emails to Jeffrey Epstein, all of
15 which occurred on JPMorgan's server, his meetings with Jeffrey
16 Epstein which were on the calendar, including numerous meetings
17 at Mr. Epstein's home, and the case against JPMorgan Chase is
18 not solely or limited to the case against Jes Staley.

19 The parties took a deposition yesterday that was very
20 instructive, but as the complaints in this case make clear, the
21 information about Jeffrey Epstein's human trafficking was known
22 widely at JPMorgan Chase. It was known from his financial
23 records. It was known from media articles that were circulated
24 widely among the bank. This case is not just Jes Staley. And
25 I say that with no intent of excusing or minimizing his conduct

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1 here, which is, of course, important to the case, but it was
2 not just Jes Staley. There will be numerous other witnesses
3 and documents that go far beyond his office, throughout the
4 executive suite and elsewhere at JPMorgan.

5 As your Honor noted, this is a case of enormous
6 importance as an enforcement matter and to victims, and it
7 should proceed. I understand that you are talking about six
8 weeks, but it is time that matters to us in securing justice
9 here. Discovery has been proceeding. There has probably been
10 four or five, maybe six weeks of document exchanges. The case
11 is not so far along that Mr. Sullivan and his firm could not
12 jump in quickly even if the cases weren't severed. But this is
13 a case -- and Mr. Butts cited your decision and the Rule 14
14 factors, and three and four, I'm not going to argue about
15 whether these are common facts, common occurrences questions of
16 law. They are certainly overlapping. But they are also
17 distinct.

18 And if you look at other case law in the circuit, one
19 of the things that courts look at is whether severance or stay
20 facilitates judicial economy by possibly eliminating the need
21 for a trial of separated claim or issue. That's the case of
22 *Crown Cork & Seal*.

23 Whether there are additional discovery burden. And
24 obviously the burden to victims here, for instance, in sitting
25 for another deposition with Mr. Staley, one of the key

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1 depositions, has already happened. It adds an additional
2 discovery burden to the case.

3 And, finally, as to your own decision which I wouldn't
4 presume to recite to you, but that was a different
5 circumstance. The *Compania Embotelladora* -- which I've
6 butchered as badly as Mr. Butts -- that was a case that
7 involved not a third-party claim but a counterclaim, and the
8 factors in severing a counterclaim are very different than a
9 third-party complaint when the U.S. Virgin Islands and the Doe
10 plaintiffs purposely chose to sue the company here because
11 that's where the conduct, I guess it's a flip term, but that's
12 where the buck stops in this case with JPMorgan Chase.

13 THE COURT: So all of you made, as I would have
14 expected, excellent arguments, but I think we need to move this
15 along. So I am going to move the trial involving JPMorgan and
16 Mr. Staley jointly, and without severance, to October 23. And
17 as far as I'm concerned, it would take something -- it would
18 take an act of God for me to move that any further. So that is
19 a firm and fixed date. And I think it's still important to
20 move these matters as expeditiously as possible. So if
21 Deutsche Bank doesn't want to join in that combined trial on
22 October 23, the trial against Deutsche Bank will remain for
23 August 8.

24 In terms of how this affects case management, maybe I
25 can prevail on counsel for Deutsche Bank to get me a decision

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1 instead of Tuesday, on Monday. Is that doable?

2 MR. HENNES: Yes, your Honor. Monday is fine. I
3 would ask if you wouldn't mind moving us into the September 5
4 slot, regardless of what happens. We have a lot to do. There
5 are discovery disputes that are ongoing, and there's a
6 tremendous amount --

7 THE COURT: Let me think about that for a moment.
8 Here is the point I want to get to.

9 So we will know by close of business Monday whether
10 Deutsche Bank wants to join in the overall case or not. If it
11 doesn't -- yes, I agree with you. I see no harm in moving it
12 to September, to what is it, September 5?

13 MR. HENNES: Yes, your Honor.

14 THE COURT: Of course that will also destroy your
15 Labor Day weekend, so that's an added benefit.

16 MR. HENNES: Thank you, your Honor.

17 THE COURT: So counsel will then, depending on the
18 answer, confer jointly, including counsel for Mr. Staley, on
19 Tuesday, and get me by no later than noon on Wednesday a
20 proposed new case management plan filling in all the necessary
21 dates that will allow those two trials to go forward on either
22 the two dates or one date that is elected.

23 And if for some reason, which I'm quite sure you can
24 all work that out, but if for some reason you can't, just
25 indicate that in your submission, and I'll resolve that later

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1 in the afternoon on Wednesday. So we'll have this all set by
2 Wednesday afternoon.

3 Okay. I think the next item is the argument on the
4 motion to dismiss the Virgin Islands' claim. If some of you
5 who are not involved in that feel the need for a break, feel
6 free to take it. I don't expect that -- because many of the
7 issues are similar to ones we've already covered, but some are
8 unique, but I'm hopeful we can resolve that -- or not resolve
9 it, but hear that full argument in the next half hour. So be
10 back in a half hour, or you can stay and watch, but let's
11 proceed with that argument. So let's hear first from moving
12 counsel.

13 (Continued on next page)

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1 MS. ELLSWORTH: Thank you, your Honor.

2 So there are several important differences in the
3 motion to dismiss the U.S. Virgin Islands complaint from the
4 motion your Honor heard on Monday. There are threshold reasons
5 why the U.S. Virgin Islands complaint cannot proceed under both
6 TVPA, the federal statute, as well as under the two territorial
7 law statutes they attempted to bring.

8 First, under the TVPA, the U.S. Virgin Islands cannot
9 invoke Section 1595(d) because it is not retroactively
10 applicable. That section was added to the statute in 2018, and
11 the conduct that the U.S. Virgin Islands accuses of violating
12 the statute all predate 2018. The statute doesn't apply
13 retroactively so they cannot proceed under 1595(d) at all.

14 Even if they could proceed under that statutory
15 provision, the U.S. Virgin Islands has failed to plead *parens*
16 *patriae* standing as is required under both the plain text of
17 1595(d) as well as under the law of *parens patriae* standing.
18 U.S. Virgin Islands has to indicate that it is proceeding on
19 behalf of an interest of the population; it cannot be trying to
20 vindicate individual rights. It didn't plead this at all in
21 its complaint other than to say *parens patriae*. It didn't
22 include any facts to suggest the interest of the citizens that
23 it is seeking to vindicate, and under the various cases that we
24 have cited to you in our papers, they do not have a basis for
25 asserting a *parens patriae* claim here, so under those two

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1 threshold issues —

2 THE COURT: So I'm not totally sure I'm following.
3 Are you saying that the person who is trafficked to a location
4 within, in this case, the Virgin Islands, isn't a resident of
5 that location under 1595(d), I guess it is, or are you saying
6 that even assuming that person is a resident, you still think
7 they don't have standing?

8 MS. ELLSWORTH: I think it might be both, your Honor.
9 So the Section 1595(d) allows the attorney general to vindicate
10 an interest of the residents of that state; they believe it has
11 been or is threatened to be adversely affected by a violation
12 of 1591. So the Virgin Islands cannot bring a complaint, nor
13 do they suggest that they are trying to bring a complaint, on
14 behalf of the victims of Epstein. Instead, the complaint is
15 purported to be brought on behalf the residents of the Virgin
16 Islands, of the territory.

17 THE COURT: Yes. But so the interesting word there is
18 "residents," not citizens or something like that. And
19 supposing, in a hypothetical, someone forced a thousand people
20 into the Virgin Islands to take advantage of forced labor or
21 something like that. Are you saying that people, even though
22 forced there and even though residing in some physical sense
23 there, would not be residents?

24 MS. ELLSWORTH: No, that's not what I'm saying, and I
25 don't think that's what the Virgin Islands is trying to plead

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1 here. They're not trying to plead a claim on behalf of victims
2 of Epstein. That would be an improper invocation of 1595(d)
3 and of the *parens patriae* doctrine. Instead, they are trying
4 to plead a complaint on behalf of the residents writ large of
5 the Virgin Islands for some amorphous and, I would say,
6 insufficiently pleaded harm that the residents have suffered
7 from the actions of Epstein. So that's the *parens patriae*
8 claim as pled by the complaint.

9 Now they have not actually alleged a sufficient
10 quasi-sovereign interest to allow them to proceed under that
11 doctrine, even, again, putting aside the gateway issue if the
12 Court could even find that 1595(d) were to apply here, which it
13 does not, because that would be an improper retroactive
14 application of that statute.

15 THE COURT: So there's that case, I think it's called
16 *Snapp* —

17 MS. ELLSWORTH: That's the one.

18 THE COURT: — where Puerto Rico had *parens patriae*
19 standing to assure its residents that it would protect them
20 from the harmful effects of discrimination. Here, the Virgin
21 Islands, as I understand it, asserts that it wants to assure
22 its residents that it will act to protect them from the harmful
23 effects of criminal sex trafficking enterprises flourishing in
24 the islands. So how do you distinguish those two situations?

25 MS. ELLSWORTH: There's no allegation in the complaint

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1 in this case of any criminal sex trafficking that is ongoing or
2 threatened to happen in the future. We all know that Epstein
3 is deceased. There's no allegation that there is some imminent
4 harm of some other sex trafficking enterprise resident on the
5 island. So I think it's a very different situation than the
6 *Snapp* case in Puerto Rico, where there was potential ongoing
7 discrimination against the residents of Puerto Rico in their
8 employment opportunities elsewhere. I would say that, again,
9 what has been alleged here is in paragraph 93 of the complaint,
10 which is simply a bald allegation, of pleading *parens patriae*
11 is insufficient to actually plead the quasi-sovereign interest.
12 But even if we put that to the side, they haven't actually
13 articulated what that interest is or why this is the
14 appropriate vehicle to try and vindicate it. And again,
15 there's nothing, no facts pled that suggest there's some
16 ongoing harm from a sex trafficking operation that they are
17 trying to vindicate. All they really, at bottom, are trying to
18 do is invoke, potentially invoke the right to victims, and of
19 course that's an improper exercise of the *parens patriae*
20 doctrine — that's the *Missouri* case that we cited to your
21 Honor in the papers — to try and invoke the rights of victims.

22 But I would like to return to the retroactivity point
23 because I'm not sure the Court even needs to reach the *parens*
24 *patriae* —

25 THE COURT: Well, I think the retroactivity point is a

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1 very important point. I do want to hear from your adversary
2 particularly about that point, but just to go to the point you
3 were just making — I'm looking at 1595(d) — "in any case in
4 which the attorney general of a State has reason to believe
5 that an interest of the residents of that State has been or is
6 threatened or adversely affected," they can bring a civil
7 action. So doesn't on its face the statute say it doesn't have
8 to be that you have future harm that you're trying to prevent
9 but it also, for obvious deterrent and other reasons, includes
10 an action for past harm?

11 MS. ELLSWORTH: Those are the words of the statute,
12 but again, the Virgin Islands hasn't articulated what that harm
13 to the residents of the state was, what the quasi-sovereign
14 interest that it's seeking to invoke here. It has articulated
15 nothing about —

16 THE COURT: You seem to be arguing that they can't
17 bring an action if they can't articulate a current danger, and
18 I don't see that the statute has that limitation.

19 MS. ELLSWORTH: I think they need to argue either a
20 past harm or a current danger.

21 THE COURT: Yes. And why aren't they satisfying past
22 harm?

23 MS. ELLSWORTH: They haven't argued either. I mean,
24 they haven't pled in their complaint what that past harm is.

25 THE COURT: Oh, I see. All right. But you agree if

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1 it's a past harm, it would still support an action.

2 MS. ELLSWORTH: A past harm could support an action,
3 but the only — again, not in the complaint, but in their
4 motion papers, the only interest that the Virgin Islands has
5 articulated that they are attempting to vindicate here is to
6 protect their citizens from the harms of sex trafficking, and
7 they haven't identified any factual basis for that.

8 THE COURT: And I want to move on. But if the
9 citizens, the residents, have — because it's not the citizens,
10 it's the residents — have suffered from sex trafficking in the
11 past, and let's assume for the sake of argument that the
12 particular perpetrator of that sex trafficking is no longer
13 around to do it, I don't read the statute as I think you're
14 trying to suggest, that that precludes their bringing an action
15 because the harm is over, so to speak, as involving this
16 particular perpetrator, because this statute very clearly, as a
17 classic hybrid statute — civil/criminal — has both the
18 general deterrent aspects as well as more immediate
19 compensatory aspects, so they're entitled to get back monies
20 that should have been paid because of the sex trafficking in
21 the past and — for example, I think these cases often involve
22 punitive damages — to deter others from using the Virgin
23 Islands as a headquarters for sex trafficking. So I understand
24 you're saying that they haven't articulated that. That's a
25 different question and an important one. But I'm not sure it

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1 has to be prospectively in —

2 MS. ELLSWORTH: I don't mean to argue that it has to
3 be prospective. What I'm saying is that they have not
4 articulated what the past harm is that is a quasi-sovereign
5 interest. It isn't harm to victims, so that's not — those are
6 not the residents on whose behalf the Virgin Islands purports
7 to be moving. And the future harm that they've articulated is
8 not a future harm that has any factual basis in the complaint
9 or otherwise. That's the point I'm trying to make.

10 THE COURT: All right. So let's move on. And I think
11 you already articulated some of this may become moot if the
12 statute is not retroactive. I have a lot of questions for your
13 adversary on that, but quickly, anything you wanted to say, and
14 then I'll put the questions to them.

15 MS. ELLSWORTH: So I don't think that the Virgin
16 Islands contests that the statute doesn't have any explicit
17 reference to retroactivity. The harm and the conduct that is
18 pled as violating the statute ends in 2013, which is when
19 JPMorgan Chase exited — ended its relationship with Epstein as
20 a client. I'll point to the cases cited in our brief but
21 particularly the *Kellogg Brown & Root* case from the Fifth
22 Circuit that found an extraterritorial application of the TVPA
23 to be an expansion of liability and therefore could not apply
24 retroactively; and the *Ditullio* case from the Ninth Circuit
25 which found the addition of the civil action to be an expansion

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1 of the statute that couldn't apply retroactively. The addition
2 of 1595(d), which allows an attorney general to bring a case,
3 is also an expansion of the statute. It is a different set of
4 harms, a different set of claims that they have to bring. I
5 just articulated why I think they haven't done so. But it is
6 not the same harm that a victim under the statute, under
7 1595(a), could bring. It is different, it is more, and by
8 expanding liability, it can't apply retroactively, and so
9 simply can't apply here at all.

10 Let me move on to the territorial law claims, if I
11 could.

12 THE COURT: Yes. Go ahead.

13 MS. ELLSWORTH: So those also fail at the outset, for
14 several reasons.

15 The first is, for both the CICO and the consumer
16 protection statute, Virgin Islands has not articulated a
17 justification for why those apply extraterritorially. The
18 Virgin Islands Code 1, Section 2 has a presumption that the law
19 applies only within the territory. Of course they're trying to
20 bring this case in the Southern District of New York against a
21 bank that is based in Delaware and has a principal place of
22 business here in New York. They have not alleged conduct by
23 JPMorgan Chase in the Virgin Islands. And in fact, in
24 paragraph 11 of their complaint, they allege that the conduct
25 of JPMorgan Chase was in New York. So the laws just can't

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1 apply extraterritorially at all.

2 Even if they could apply, moving first to the CICO
3 claim, which is their version of RICO — I know the Court was
4 just hearing an argument about RICO in the prior case — they
5 have to show participation, they have to show venture, and they
6 have to show an underlying predicate act. The CICO law follows
7 federal RICO law, so I won't recite it. I know the Court is
8 very familiar with it. But let me tell you why they can't
9 satisfy it.

10 First, there's no enterprise, so even if there is an
11 Epstein enterprise of some sort, under the law of RICO or CICO,
12 they need to show that JPMorgan shared a common purpose with
13 that Epstein enterprise in order to establish an enterprise
14 under the statute. There's no pleading of that, nor could they
15 possibly plead something fact sufficient to meet that element
16 of the claim. Also can't show the participation.

17 But let me move to the predicate acts because that may
18 be another easier way to dispose of this claim. Under CICO, it
19 requires the underlying predicate criminal act to have taken
20 place within five years of the filing of the claim. Again, the
21 underlying criminal acts that are alleged here all occurred
22 earlier than 2013. Now the Virgin Islands does make some
23 arguments in their papers about some ongoing violation or
24 ongoing conduct that would somehow make the claim more timely.
25 Those allegations are not sufficient to get them over this

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1 five-year bar because the allegations are a failure to follow
2 the requirements of the bank's secrecy act and the failure to
3 file a SAR earlier than JPMorgan did.

4 THE COURT: Yes. As I read it — I want to hear from
5 plaintiff's counsel — it was mostly a failure to file
6 suspicious activity reports.

7 MS. ELLSWORTH: And again, that failure — to the
8 extent that there was one, which we don't agree with — would
9 have taken place prior to 2013. The activity that supposedly
10 JPMorgan should have acted on all predates 2013.

11 I also would just note that even if that was a
12 cognizable claim, even if there weren't the other threshold
13 problems I've identified with it, the chain of causation simply
14 doesn't exist. Even a SAR with the Treasury would not go to
15 the U.S. Virgin Islands, so there's no connection to why the
16 alleged failure to make those regulatory filings would somehow
17 have changed anything in the Virgin Islands conduct.

18 Finally, on the consumer protection, that also has a
19 six-year statute of limitations, that is outside — this claim
20 is outside the unfair competition law. That claim is barred by
21 the statute of limitations. That also — it's very thinly
22 pled, I will say. As best I understand the allegations, it's a
23 suggestion that somehow other banks would have had different
24 business had JPMorgan not engaged in the conduct alleged in the
25 complaint. There's not sufficient factual information to

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1 support that, nor have they articulated why that would harm
2 consumers in the Virgin Islands. And so if the Court has no
3 questions on that, I'm happy to move on.

4 THE COURT: Yes, that's fine. Let me hear from the
5 Virgin Islands. Thank you.

6 MS. ELLSWORTH: Thank you.

7 MS. LIU: May it please the Court. I'll begin with
8 the TVPA retroactivity argument.

9 The critical question there, your Honor, is does the
10 amendment increase JPMorgan's liability for past conduct, and
11 the answer is no. The *Hughes Aircraft* case makes clear that
12 you can't just say there are differences. The differences must
13 increase JPMorgan's liability or past conduct. That case
14 involved an amendment to add *qui tam* plaintiffs. The court
15 said that effectively created a new cause of action because the
16 *qui tam* plaintiffs had greater incentives to bring a cause of
17 action than did the government. Here, the legislative history
18 is abundantly clear, contrary to my adversary's arguments, that
19 Congress intended this to be a right of action, not a cause of
20 action. Specifically, the language in the legislative history
21 states, the amendment "creates a right of action for state
22 attorneys general to file federal causes of action for sex
23 trafficking." Obviously Congress intended to distinguish
24 between a right of action and a cause of action. As the Court
25 well knows, a right of action is procedural, and the *Landgraf*

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1 case, at page 275, makes abundantly clear that applying a new
2 procedural rule is not impermissibly retroactive.

3 My adversary also argues that if we have to show
4 post-2018 amendment conduct, we have not done so. That is not
5 true. They argue that there was no financial benefit
6 post-2018. The first amended complaint at paragraph 86, among
7 other places, makes clear that JPMorgan continued to benefit
8 until after Epstein's arrest and death in 2019, so there is a
9 full year of conduct alleged in the complaint post amendment.

10 With respect to the —

11 THE COURT: Well, are you saying that the fact that
12 they continued to benefit in a financial sense by itself
13 extends the statute of limitations?

14 MS. LIU: Certainly not, your Honor. I was just
15 addressing a point in their reply, which is that of the
16 elements of the TVPA that we need to prove, they assert we
17 didn't prove the "knowingly benefit" prong for —

18 THE COURT: All right. Just hypothetically, because I
19 haven't made any decision or anything in this matter yet, but
20 assuming that the statute is not retroactive in the sense that
21 they're talking about, so you have to show something in 2018,
22 what, other than the failure to file suspicious activity
23 reports, do you allege?

24 MS. LIU: Yes, your Honor. The ongoing violation of
25 federal banking laws which allowed them to continue to conceal

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1 the misconduct constitutes a violation post-2018 through and
2 after Jeffrey Epstein's arrest and death in mid-2019.

3 THE COURT: So they say that if anyone was a direct
4 victim of that failure to file, it was not the Virgin Islands
5 but it was the banking authorities in Washington. What about
6 that?

7 MS. LIU: Well, certainly those consequences
8 reverberated to including the Virgin Islands. This is a *parens*
9 *patriae* case and I think this segues nicely into the *parens*
10 *patriae* argument, which allows the U.S. Virgin Islands to bring
11 this case on behalf of the interests of its residents. And to
12 answer your question earlier, your Honor, certainly the direct
13 interest of the victims, as residents of the Virgin Islands,
14 are implicated here as well as the indirect interests of the
15 other residents of the Virgin Islands. And I would note that
16 of course the victims, who were trafficked to, held captive in,
17 and sexually assaulted in the Virgin Islands, they were
18 residents for purposes of the *parens patriae* authority, and
19 that is because the nature of human trafficking is such that
20 the victims do not have any legal residence. We're talking
21 about conduct that is necessarily cross-border. The TVPA only
22 contemplates conduct that occurs in or affecting interstate
23 commerce or foreign commerce. Yet the federal law explicitly
24 authorizes *parens patriae* action on behalf of the direct
25 interests of the residents and the indirect interests of the

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1 residents in this context. I would add that the *Spitzer v.*
2 *Cain* case that my adversary cited in their motion, that was a
3 case involving women seeking abortion services in New York
4 City. We know that women seeking abortion services — and the
5 court does not consider this — often have to cross state
6 lines. The court didn't say, oh, my goodness, those women are
7 not New York legal residents and thus we're not going to
8 consider them for purposes of a *parens patriae* case. That's
9 just not what —

10 THE COURT: Yes. I mean, I think the point is telling
11 here. What is telling here is that Congress used the term
12 "residents." They didn't say "lawful residents"; they didn't
13 say "citizens"; they didn't use any of the other terms that
14 they've used in other statutes. And the sort of common sense
15 would be "resident" is someone who is residing in that
16 particular location, whether by choice or by force, or
17 trafficking.

18 MS. LIU: Absolutely, your Honor.

19 And my adversary also mentioned that we did not allege
20 any quasi-sovereign interests on behalf of the Virgin Islands
21 and its residents. I would just point the Court to our
22 opposition brief at pages 9 and 10, where we cite multiple
23 passages from the first amended complaint, where we allege the
24 interest in protecting public safety, in protecting young women
25 from the criminal human trafficking, ensuring that criminal

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1 human trafficking does not flourish in the Virgin Islands.
2 There were three, four, five allegations in the complaint about
3 the Virgin Islands's quasi-sovereign interests here in
4 protecting the health and well-being of its residents, as
5 recognized in the *Snapp* case.

6 I want to address a few issues that were brought up on
7 Monday, your Honor, that Wilmer Hale did not address today, but
8 the first being that we have pled all of the elements of a TVPA
9 claim. JPMorgan Chase participated in a commercial sex
10 trafficking venture. In the ordinary course, after Jeffrey
11 Epstein pled guilty to conduct that constitutes child sex
12 trafficking under the TVPA, in 2008, in the ordinary course,
13 the bankers at JPMorgan expected that JPMorgan would exit
14 Epstein; and instead, what happened? Pending Dimon review —
15 that's Jamie Dimon — pending Dimon review, Jeffrey Epstein
16 remained as a client of the bank for an additional five years
17 JPMorgan broke the rules. In addition, after he got out of
18 jail for conduct that constitutes child sex trafficking, and
19 their compliance department got more allegations of more sex
20 trafficking, who did they assign to investigate those
21 allegations? Not their lawyers, not their investigators; they
22 assigned the CEO of the private bank and the investment bank.
23 Why did they do that? Because they knew if they did that, the
24 answer would come back clean.

25 I would also note that there's certainly not ordinary

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1 banking services here. We talk about the *Deutsche Bank* case,
2 and the New York banking regulator went after Deutsche Bank for
3 conduct that we say is similar but less egregious than here.
4 The banking regulator found this banking conduct to be so
5 nonroutine and to be so extraordinary that they imposed a
6 \$150 million penalty on Deutsche Bank. Again, JPMorgan broke
7 all the rules.

8 I also want to make a note about Mr. Staley. We can
9 put Mr. Staley to the side, as my colleague Ms. Singer noted,
10 and we have still alleged that JPMorgan knew and detected
11 Epstein's sex trafficking. In 2008, again, Jeffrey Epstein
12 pled guilty to conduct that constitutes child sex trafficking,
13 solicitation of a minor for prostitution. That's what he pled
14 guilty to. The TVPA bars soliciting a person who has not
15 attained 18 years of age for a commercial sex act. Those are
16 identical, your Honor, so they knew as early as 2008, if not
17 earlier.

18 In addition, for persons over 18, they knew about
19 force, fraud, and coercion. They had massive internal
20 investigation teams reporting for years that Jeffrey Epstein
21 was involved in child trafficking and human trafficking. The
22 term "human trafficking" means force, fraud, or coercion.
23 There are also specific internal reports of force, fraud, and
24 coercion — fraudulently luring young girls with promises of
25 modeling contracts, bringing young women over from Eastern

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1 Europe when they could not voluntarily leave.

2 And last but certainly not least, Little St. James,
3 which we allege was the base for the human trafficking, that
4 was Epstein's private secluded island. It's miles off the
5 coast of St. Thomas. Young women brought there, obviously and
6 inferably, could not leave.

7 So now let's put Staley back into the case. First of
8 all, as my colleague Ms. Singer said, everything, everything
9 that we allege about Mr. Staley in the first amended complaint
10 comes from JPMorgan's corporate documents. These are all their
11 documents. These were not Mr. Staley's private documents;
12 these were JPMorgan's documents. Everything we know, JPMorgan
13 knew. JPMorgan obviously had firsthand knowledge and view of
14 the sex trafficking through Staley. On Monday, my adversary
15 argued, but there's no allegations of force, fraud, or
16 coercion. Your Honor, of course there is. As I just
17 mentioned, Mr. Staley visited little St. James multiple times,
18 a private secluded island, miles from anywhere. Women could
19 not leave. They also said, but they didn't allege money
20 changing hands. You'll recall that. We do allege money
21 changing hands, in full view of JPMorgan, timed with
22 Mr. Staley's visits to Epstein's sex mansion. JPMorgan was
23 sending, through Epstein's accounts, thousands of dollars to
24 the same Eastern European women. There was money changing
25 hands. But in any event, it doesn't matter what JPMorgan knew

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1 or didn't know. Everything that Mr. Staley did was within the
2 scope of his employment, and thus imputed to JPMorgan.

3 We talked a little, you'll recall, about the hotel
4 cases. They cited to you *Choice Hotels* from the Eastern
5 District of New York numerous times. Well, what they didn't
6 say about that case, Judge, is that that's a
7 franchisor/franchisee case, and what the court specifically
8 said is the general rule there, no agency, no imputation. The
9 case they didn't mention at oral argument on Monday or today is
10 a case that Wilmer Hale and my adversary litigated on behalf of
11 the TVPA victim, Lisa Ricchio. That's the *Ricchio v. McLean*
12 case, Judge. That went all the way up to the First Circuit,
13 and Justice Souter, retired from the Supreme Court, sitting by
14 designation, he — they sued both the offsite hotel defendant
15 and the on-site hotel employee. If you will, analogize that to
16 JPMorgan and Jeff Staley. And what did they argue there? Of
17 course the on-site hotel employees are agents for the offsite
18 corporation, and of course — and Justice Souter agreed — they
19 are the agents, and anything they know, they knew and saw, is
20 imputed to the offsite hotel.

21 THE COURT: Whoa, whoa, whoa. It's one thing what the
22 court decided. I don't see anything wrong — maybe I'm missing
23 your point — between a law firm arguing one position in one
24 lawsuit and the opposite position in another lawsuit. I
25 thought that's what we all learned in law school.

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1 MS. LIU: And I wasn't suggesting there's anything
2 wrong there, your Honor. My point was that that is perhaps the
3 most famous of the TVPA cases, of the hotel cases. It's one
4 that was not mentioned, and it's one where the court said,
5 without any pause, of course what the hotel employees saw can
6 be imputed to their owners, the hotel chain.

7 And also, I just want to add the note, if Staley is,
8 as JPMorgan argues, a rogue employee, if Staley is a rogue
9 employee, why isn't Jamie Dimon? Because the question is not,
10 as has been sort of alluded to — the question is not whether
11 or not Mr. Staley raped any young women in the Virgin Islands.
12 That's not the question. The question is: What did he know?
13 And Jamie Dimon knew in 2008 that his billionaire client was a
14 child sex trafficker. Staley knew, Dimon knew, JPMorgan knew.

15 With respect to the extraterritoriality arguments,
16 this is very puzzling to me, your Honor. They cite this case
17 *InfoSpan* for this point. *InfoSpan* involved a UAE bank
18 defendant, a Cayman Islands plaintiff, and the issue there was
19 credit card services to UAE customers. And the lawsuit was
20 brought in California. There, the court found that there were
21 not sufficient contacts with California. Here, JPMorgan
22 targeted and transacted business for decades with Jeffrey
23 Epstein, a resident of the Virgin Islands, who we allege his
24 home base for trafficking was in the Virgin Islands, and the
25 principal purpose of the accounts that JPMorgan held for

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1 Jeffrey Epstein was human trafficking. Of course we have
2 alleged sufficient connections with the Virgin Islands.

3 With respect to CICO, we've proved each element. The
4 best case that they could cite for association with a CICO
5 enterprise is the *Rosner* case, Judge. If you look at the
6 *Rosner* case, here's what the allegations were there — six
7 months of a relationship in conduct between a bank and the
8 individual involving 38 or roughly three dozen transfers that
9 the court said was insufficient to get us beyond sort of
10 regular banking services. Here, we have a nearly 20-year
11 relationship, hundreds of millions of dollars in accounts,
12 countless transactions to young women who were Epstein's
13 victims and recruiters, by JPMorgan. In short, they broke
14 every rule to facilitate his sex trafficking and then to
15 conceal it in exchange for Epstein's wealth, connections, and
16 referrals. This is a far cry from the six months and the
17 handful of transactions at issue in *Rosner*.

18 I will also mention the *Daddario* case that they cite
19 from the Second Circuit, that case says that operation or
20 management — which we have alleged, but nonetheless, that case
21 says that test must be applied based — it's a test of — it's
22 based on the facts. It is not appropriate, the court said, to
23 make that determination at this early stage on a motion to
24 dismiss.

25 Last, with respect to the pattern of criminal

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1 activity, the five-year statute of limitations applies to the
2 look-back rule, I would just note for your Honor that
3 604(j)(2)(B) specifically says that does not apply in the
4 context of criminal human trafficking. It references Title 5,
5 Section 3541. If you look at Title 5, Section 3541, that's a
6 criminal statute of limitations. The first section of that
7 statute specifically says, when it pertains to human
8 trafficking, there is no time limitation. We've alleged
9 conduct within five years, but we don't need to because there
10 is no time limitation under CICO to go after JPMorgan for human
11 trafficking.

12 THE COURT: So just while we're on the subject of
13 CICO, so you allege a so-called association-in-fact enterprise,
14 and the enterprise that you're positing is an
15 association-in-fact enterprise between JPMorgan and
16 Mr. Epstein's sex trafficking, or his sex trafficking venture.
17 But your adversary says that really all you've shown that was
18 the common enterprise, if at all, was an enterprise for making
19 money, and you allege that JPMorgan's services furthered the
20 trafficking enterprise's purposes, but you don't allege that
21 JPMorgan shared the purpose of trafficking. So I'm not sure if
22 I'm making myself totally clear, but as I understand the
23 argument from your adversary, it's one thing to allege that for
24 various claims that JPMorgan knew of and, through its services,
25 facilitated Mr. Epstein's sex trafficking; it's something else

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1 to say that they together formed a single enterprise whose
2 purpose that was. My grammar may be a little off, but anyway,
3 you get the point. What about that?

4 MS. LIU: So under the *People v. McKenzie* case, which
5 is the Virgin Islands CICO case upon which JPMorgan relies,
6 what is required for association with an enterprise is, yes, a
7 common purpose, longevity, and relationship. They don't argue
8 longevity or relationship. Obviously those two are shown.

9 With respect to common purpose, what the cases look at
10 is were these routine, run-of-the-mill services that were being
11 provided, or is there somehow something more going on here, and
12 does that something more go to the heart of the enterprise?
13 And certainly, Judge, we have alleged that here. We have
14 alleged that at every turn, they broke every rule and engaged
15 in not run-of-the-mill banking services but rather
16 extraordinary banking services to facilitate, to promote
17 Jeffrey Epstein's sex trafficking enterprise. Why? First of
18 all, the principal business of those accounts at JPMorgan, we
19 allege in the complaint, was sex trafficking. So the money,
20 the referrals, the connections, all of the business related to
21 sex trafficking, and JPMorgan facilitated that transacted
22 business, and fed off the wealth, connections, and referrals of
23 Jeffrey Epstein for almost two decades. Of course they were
24 not only associated with the enterprise; their conduct, in
25 making the transactions, in channeling the funds, and in

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1 concealing the conduct, allowed that sex trafficking enterprise
2 to flourish, including in the Virgin Islands.

3 THE COURT: Well, so I'm more familiar with the term
4 "enterprise" in the context of RICO than in CICO, and I need to
5 get more familiar with it in the latter context, but at least
6 in the RICO context, we're usually talking about something that
7 has a common organization. It may be an implicit organization,
8 but it's not the same as a criminal organization that uses
9 someone else's services and this person who provides the
10 services knows he's providing it to a criminal organization.
11 In my hypothetical, the aider and abettor, if you will, may
12 have liability as an aider and abettor, but he's not part of a
13 common enterprise. So I'm still having a little difficulty
14 seeing why there's a common enterprise here.

15 MS. LIU: Sure. So we allege that had it not been for
16 JPMorgan, that Jeffrey Epstein's sex trafficking enterprise or
17 sex trafficking venture could not have flourished as it did.
18 JPMorgan provided the banking services, the extraordinary
19 banking services and later the coverup, to allow Jeffrey
20 Epstein's sex trafficking venture to flourish. And under the
21 case law, including the *Handeen* case we cite from the Eighth
22 Circuit, for example, when the courts are looking at whether or
23 not professional services can be part of an enterprise or can
24 be associated with an enterprise, what they look at is, are
25 these run-of-the-mill services or not run-of-the-mill services,

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1 and if the latter, did they go to the heart of the enterprise?
2 And we've alleged 20 years of not run-of-the-mill services that
3 enabled, facilitated, and allowed Jeffrey Epstein's enterprise,
4 the sex trafficking enterprise, to flourish, including in the
5 Virgin Islands.

6 THE COURT: All right. So unless there was anything
7 else you needed to cover, I think we need to hear rebuttal from
8 your adversary.

9 MS. LIU: Very well. Thank you, your Honor.

10 THE COURT: Thank you.

11 MS. ELLSWORTH: Thank you, your Honor.

12 As to the question of the retroactive application of
13 Section 1595(d), counsel cited so-called legislative history.
14 That is a single — a floor statement from a single member of
15 Congress. I know different courts have different views of
16 legislative history writ large, but a single floor statement is
17 certainly not persuasive history of anything.

18 I would also note, as to the *parens patriae*
19 requirement, counsel just stated that the case the U.S. Virgin
20 Islands is bringing is on behalf of the victims of Epstein who
21 were, in her articulation, somehow residents of the island.
22 That is an impermissible *parens patriae* case. That is a case
23 on behalf of a particular individual interest. They need to
24 plead a quasi-sovereign interest. They have not pled it in
25 their complaint, they attempted to backfill it in the motion to

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1 dismiss opposition, and they still have not identified any
2 facts to support a quasi-sovereign interest. What was just
3 articulated is contrary to a quasi-sovereign interest and
4 instead is a vindication of private interests.

5 THE COURT: I'll have to go back and look at the
6 complaint. Certainly what your adversary said here was that
7 Virgin Islands's interest was in not allowing the Virgin
8 Islands to become an easy base for sex trafficking, which,
9 given its remote islands and its other situations, it could
10 otherwise easily become. And assuming for the sake of argument
11 that that's articulated or could be articulated in the
12 complaint, why isn't that enough?

13 MS. ELLSWORTH: Because there's no factual suggestion
14 that there's some risk of that happening in the future, and as
15 to past harm, there's no articulation of how that harms the
16 residents of the Virgin Islands. Certainly not in the
17 complaint. Again, there's one paragraph in the complaint
18 that's conclusory at best but even in the paragraphs that are
19 cited on page 9 of the opposition brief that counsel just cited
20 to you, paragraph 107, doesn't have any articulation of harm to
21 the Virgin Islands that they're seeking to protect. In order
22 to proceed as a quasi-sovereign, they need to articulate an
23 interest that is different —

24 THE COURT: Yes, but I guess my question is: Assuming
25 for the sake of argument that they had articulated the interest

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1 they've now articulated in oral argument, why isn't that
2 sufficient that the Epstein trafficking situation showed that
3 the Virgin Islands were too easy a target for people like
4 Mr. Epstein to engage in sex trafficking because it presented,
5 for example, remote islands that could be used for this purpose
6 from which the victims could not escape, because it was less in
7 the public eye. One could go on. I understand fully your
8 point that their complaint has not articulated it and it may be
9 the end of that, but assuming for the sake of argument that
10 what was articulated just a moment ago had been properly pled
11 or could be properly pled, why isn't that sufficient?

12 MS. ELLSWORTH: I don't think it's sufficient to make
13 sort of generalized statements about sex trafficking
14 threatening public safety or somehow threatening the residents
15 of the Virgin Islands. It's a very amorphous and ill-pleaded,
16 even if it were pled, which it's not — I know your Honor will
17 look carefully at the complaint. It doesn't sort of identify
18 the concrete interests. They do need both *parens patriae*
19 interest and Article III standing, right? *Snapp* makes that
20 clear, as do the cases out of the Second Circuit.

21 THE COURT: Why isn't this an easier case just on
22 standing? I remember thinking of the famous case of
23 *Massachusetts v. EPA*, where Massachusetts was able to gain
24 standing by saying that global warming is partly caused by
25 emissions from vehicles throughout the United States but it

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1 erodes land in the coast of Massachusetts and therefore we have
2 standing. Why isn't this a much easier case than that?

3 MS. ELLSWORTH: Well, *Massachusetts v. EPA*, the
4 ongoing harm there was the continued both past erosion and
5 future erosion that was expected to occur, and unfortunately
6 has occurred, on the shoreline of Cape Cod and elsewhere in
7 Massachusetts.

8 THE COURT: Yes, but then if you keep talking about
9 the future, I keep coming back to the words of the statute,
10 which is "has been."

11 MS. ELLSWORTH: I understand, but they haven't pled
12 either. That's why I'm —

13 THE COURT: I understand that point.

14 MS. ELLSWORTH: There's no factual articulation of
15 some future imminent harm necessary under *Mass. v. EPA* or
16 *Spokeo v. Robins* or any of the other Article III cases, and
17 there's no articulation of what the past harm to residents that
18 is a quasi-sovereign interest that has been inflicted.

19 THE COURT: This goes back to an earlier argument. If
20 the residents include the victims who were transported there,
21 then —

22 MS. ELLSWORTH: Then that harm is not a
23 quasi-sovereign interest, that's a private interest that the
24 U.S. Virgin Islands would be trying to advance on behalf of
25 individuals.

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1 THE COURT: All right.

2 MS. ELLSWORTH: That's being advanced, quite ably, by
3 other parties sitting in this courtroom.

4 THE COURT: Okay.

5 MS. ELLSWORTH: If I can make a few other points, your
6 Honor.

7 THE COURT: Yes, absolutely.

8 MS. ELLSWORTH: So —

9 THE COURT: I wanted to hear what you had to say about
10 the enterprise issue.

11 MS. ELLSWORTH: Yes, I think your Honor's questions
12 were correctly directed towards trying to identify what that
13 enterprise is. I don't think, number one, it has been pleaded;
14 number two, I don't think counsel was able to articulate an
15 enterprise that would satisfy either the federal RICO or the
16 CICO case law that has been cited to you. Again, there needs
17 to be more than we — we've talked about participation and what
18 that means in the context of TVPA cases. In RICO, there needs
19 to be a meeting of the minds; there needs to be a more overt
20 act than it's both participation or an enterprise.

21 THE COURT: Basically, this is not the only
22 possibility, but most common association-in-fact under RICO are
23 conspiracies. And this is not an agreement that would
24 constitute a conspiracy, or at least that is the argument
25 you're making. I think it has some force.

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1 MS. ELLSWORTH: That is correct, your Honor. I would
2 also note that as counsel noted, the U.S. Virgin Islands used
3 its enforcement power to obtain documents from JPMorgan Chase
4 on which it based the allegations of its complaint, so it has
5 already received the discovery that it might need in order to
6 make out or attempt to make out a well-pleaded complaint on all
7 of these counts and it has not done so. I do feel compelled to
8 note that the Court is constrained by the allegations of the
9 complaint. Counsel's argument today was not so constrained.
10 There were several statements made that are not supported by
11 the complaint at all; in particular, the suggestion of
12 Mr. Dimon having any knowledge of anything.

13 THE COURT: Well, I know all about constraints because
14 I'm a married man. But in any event, I take your point.

15 MS. ELLSWORTH: The final point I'd make, your Honor,
16 is just, I didn't argue the factors of the TVPA to you. We do
17 have separate arguments as to why, even if 1595(d) applies
18 retroactively and even if they have sufficiently made out a
19 *parens patriae* complaint, the TVPA claim still fails on the
20 merits. I won't repeat them, but I will just point out to the
21 Court that the knowledge requirement for the attorney general
22 statute is different than the knowledge requirement that needs
23 to be pled by a victim, such as the Jane Doe case. There is no
24 constructive knowledge or no "should have known" aspect of the
25 claim that the U.S. Virgin Islands is bringing. They do have

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1 to show actual knowledge in order to proceed under the TVPA.

2 THE COURT: Okay. The only thing that was sort of new
3 was that last point. If counsel for the Virgin Islands wanted
4 to respond to that last point, I'll allow her; otherwise, we'll
5 move on.

6 MS. LIU: I'm sorry, your Honor. My colleagues were
7 distracting me and I missed the last point.

8 THE COURT: Oh, wow. Boy. You're sure he's not a
9 fifth column?

10 So there was argument being made as to what knowledge
11 had to be shown, but, you know, I think, in all fairness, I
12 wanted this argument to go a half hour. It's already gone
13 almost an hour. I will look at your papers carefully, and if
14 there's anything further I need, I'll let you know and you can
15 submit something.

16 MS. LIU: Thank you, your Honor. Yes. We briefed
17 that issue in our papers.

18 THE COURT: Okay. So I will reserve judgment, but as
19 already indicated, we'll get you a bottom-line ruling by the
20 end of the month. And by the way, I will, of course, write a
21 full opinion on all these issues. I just don't think I'll have
22 a chance to finish that by the end of the month. But there
23 will be a full opinion as well as a bottom line preceding it.

24 All right. Now we need to turn to some discovery
25 matters. And the first one on my list is the motion by

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1 JPMorgan to compel the production of documents from the Epstein
2 Victims Compensation Program. And I appreciate that counsel
3 for that program has patiently been here, but let me hear first
4 from counsel for JPMorgan.

5 MS. ELLSWORTH: Me again, your Honor.

6 So we have a motion to compel the production of
7 documents relating not just to the plaintiff — this isn't just
8 the Doe case right now, but from the victims compensation
9 program for the applications and other information submitted
10 by —

11 THE COURT: What about that? As I understand, the
12 administrator argues, among other things, that there's a
13 privacy concern here that can be outweighed, but it has to be
14 outweighed by some very special need.

15 MS. ELLSWORTH: There certainly is a privacy concern,
16 and I think that concern is ably addressed by the protective
17 order in this case. We have also offered to have the
18 information, names redacted and other information like that.
19 We're not seeking that information right now.

20 The reason why this information is so important, and
21 the reason why we're able to overcome whatever privacy concern
22 might exist and has been articulated, is because this
23 repository of information is quite critical to the class
24 certification arguments that your Honor will hear. This will
25 identify differently situated individuals who are thought to be

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1 or who are part of the putative class right now and will
2 identify — go to issues such as typicality, commonality,
3 predominance, etc., to allow the Court to understand whether a
4 class can be certified at all in this case and, if so, what the
5 contours of that class might be. So we think we've more than
6 overcome —

7 THE COURT: So for example, I'm looking at request 7,
8 documents sufficient to show the total number of applicants
9 that the program approved for any compensation and the reason
10 for those approvals; and request Number 8, documents sufficient
11 to show the total number of applicants that the program denied
12 any compensation, the reasons for those denials. What does the
13 exercise of their judgment in that regard have anything to do
14 with this case?

15 MS. ELLSWORTH: Well, perhaps the exercise of the
16 program's judgment may be — we don't know what these documents
17 look like so we don't know what information is being weighed,
18 but certainly the submission that different individuals made to
19 the program that would demonstrate differences in the length of
20 time during which they were abused, differences in the effect
21 or impact that that abuse may have had on them, differences in
22 how they came to be involved with Epstein and how they came to
23 no longer be involved with him, those are all differences that
24 — both the way they might be weighed by the program but, more
25 importantly, information that was submitted to the program

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1 would be very important for understanding the class
2 certification question.

3 I would also note that this is a repository of this
4 information that typically doesn't exist in a case where you
5 have a putative class, such as like we do in this case. It's a
6 repository that would allow the information to be considered by
7 the Court and to be marshaled by JPMorgan without having to
8 invade the interests of unjoined class members at this point,
9 and so that is a reason why there's — again, with the
10 appropriate privacy protections of the protective order and
11 potentially something more, this information already exists and
12 can be provided and can be considered by the Court to
13 understand whether in fact the class certification requirements
14 are met here.

15 THE COURT: All right.

16 MS. ELLSWORTH: The other point I'd like to make, your
17 Honor, is we did attach — I don't know if the Court has the
18 attachments there, but — the protocol that is publicly
19 available that the program used or announced. I can pass up a
20 copy if you don't have one.

21 THE COURT: Yes. Let me see that.

22 MS. ELLSWORTH: So the protocol — and I point the
23 Court to page 9 of the protocol — at the very end indicates
24 two things that I think are important for the Court's
25 consideration. The first is that all confidentiality

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1 requirements are subject to law, regulation, and judicial
2 process. I don't think the Court needed the program's
3 recognition of that in order to exercise its power, but
4 certainly that was recognized by the program and by those who
5 participated in it that these confidentiality obligations would
6 have some — would be subject to something like this.

7 The other point I would raise to the Court is the
8 paragraph directly preceding that indicates that individual
9 claimants are not bound by any confidentiality if they choose
10 to disseminate the information that they submitted. If they
11 choose to disseminate their experience with the program, they
12 are free to do so, under the weight of the confidentiality
13 protections that were put in place for this program. So the
14 program has made a suggestion of a mediation privilege that
15 applies here. This is unlike a mediation privilege that the
16 Court I think would typically see because it's only one way;
17 apparently, it doesn't apply necessarily to the other
18 counterparties to the privilege. And so that as a matter of
19 fairness, if the Court is — one of the factors that the Court
20 considers in determining whether a mediation privilege, once
21 invoked, can be overcome, the fact that one side of the
22 equation can use this information and JPMorgan is not being
23 allowed to access it is we think unfair because it would be
24 necessary for the Court's full consideration of the class
25 consideration.

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1 THE COURT: All right. Thank you very much.

2 Let me now hear from counsel for the program.

3 MR. SMITH: Good afternoon, your Honor. Patrick Smith
4 for nonparty Jordana Feldman in her capacity as administrator
5 of the program.

6 You know, we've been going here for roughly two and a
7 half hours, and the first hour was —

8 THE COURT: Well, I'm just getting going.

9 MR. SMITH: Just getting going. And I listened for an
10 hour as the Court made its schedule on two cases with trial
11 dates, etc., and then we heard able counsel argue motions to
12 dismiss for approximately another hour.

13 I think it's worth pointing out what a marvel this
14 program was, and is, because in this program, about 130 claims
15 were sort of adjudicated through this ADR process in an
16 efficient manner, in about one year's time. Many of those
17 claims had already been subject to filed litigation, and other
18 claims were filed with the administrator after the program was
19 publicized. The program paid out in a sufficient manner
20 approximately \$121 million. And at the cornerstone of this
21 program is the promise of confidentiality. The program was
22 built around confidentiality, and it was confidentiality as
23 to —

24 THE COURT: Why isn't that problem — which I agree
25 with you is a serious matter — solved for all these immediate

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1 purposes by (a) redacting the names, and (b) having the
2 documents subject to the Court's protective order?

3 MR. SMITH: Well, let me start with the protective
4 order first, because "protective order" is quite broad. It
5 includes literally hundreds of potential people, including all
6 of the personnel at JPMorgan, which is a company that employs
7 tens of thousands. The protective order is also no guarantee
8 that the documents would become part of the public record at a
9 trial. The protective order —

10 THE COURT: Well, that's true, but that's in the
11 Court's discretion.

12 MR. SMITH: The protective order really is, I would
13 submit, a slippery slope towards eventual publicizing of the
14 document and the circumstances of the individuals.

15 THE COURT: In virtually every case, of any size, this
16 and every other judge in this court gets a confidentiality
17 order, and the main difference between some of those orders and
18 my order is that I put the parties on notice that the Court
19 reserves the right to make something public if it has to do
20 with a motion or has to do with evidence at trial or something
21 like that, so that no one can claim that they were surprised
22 when the Court does that, but obviously, like every other
23 court, this Court is very sensitive to protecting the
24 confidential information of victims. So I don't understand why
25 you think it's any different here.

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1 First of all, the names are redacted. And I
2 understand that's not the end of the question. Second, though,
3 you might want to ask me to make it attorneys' eyes only. That
4 might be a good resolution. But in any event, just like your
5 agreement had a confidentiality provision, this case has a
6 confidentiality provision.

7 (Continued on next page)

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(Continued)

MR. SMITH: Well, so here's what I think makes it different, and some of it goes to the nature of the private intimate details of the nature of the abuse that the claimant suffered. But there's a substantial number of the claimants in the information that's sought by JPMorgan on their motion who are claimants that never would have stepped forward and asserted their claim but for the principle of confidentiality at the core of the program and wouldn't have signed up for the process --

THE COURT: Well, I mean, that's relevant, but, first of all, this was not itself a court order.

MR. SMITH: It was --

THE COURT: At least so far as I can see from what was handed to me.

And, second, more importantly, as was pointed out by your adversary, it says, in a whole separate paragraph when they're getting to confidentiality, "All confidentiality requirements are subject to law, regulation, and judicial process."

And one would have to be very cloistered not to know that the issues involving the Epstein victims were going to be the subject of other litigation.

MR. SMITH: Your Honor, this was a court-approved and authorized program.

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1 THE COURT: Okay, what court approved it?

2 MR. SMITH: The Superior Court of the Virgin Islands
3 in the matter of the Estate of Jeffrey Epstein. The architects
4 of this program -- Ken Feinberg, Camille Biros and our client,
5 Jordana Feldman -- traveled to St. Thomas and testified about
6 the circumstances of this program, including testimony from Ken
7 Feinberg, who was questioned under oath, back on February 4,
8 2020, about the nature of the program. Concerns about
9 confidentiality were raised by the Attorney General of the U.S.
10 Virgin Islands, and Mr. Feinberg gave testimony about how
11 important it was that the protocol expressly secures the
12 confidentiality of anything provided by the claimant.

13 He also testified that the claimant, and the claimant
14 alone, decides the extent of transparency or disclosure; not
15 the program, not the administrator, or the estate. I have
16 extra copies of what I'm reading from.

17 THE COURT: No. No. I appreciate that and like most
18 people, I'm a great admirer of Mr. Feinberg, and that is
19 despite the fact that he and I served in the U.S. Attorney's
20 Office together, so I know what a bad sense of humor he had.
21 But, of course, that court -- and I'm glad to know, it's
22 important to know that the court approved this order, but, of
23 course, that's not binding on this Court.

24 MR. SMITH: No, but now I think we're in the terrain
25 sort of covered by the Second Circuit's case in *Telligen* and

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1 your colleague, Judge Furman's, very sort of thoughtful
2 decision in *Accent Delight*, and what are the reasons for
3 applying a mediation privilege in this circumstance, and that
4 is to incentivize -- among other things, incentivize
5 participants to use an alternative dispute resolution program
6 to settle matters, to provide information and arguments on a
7 confidential basis, and keep litigation from clogging the
8 courts, and that's exactly --

9 THE COURT: And, of course, Judge Furman is another
10 great judge. But there have been other judges who have
11 questioned the entire effect of that in keeping from the public
12 important information and allowing people who have committed
13 wrongdoing to, in effect, buy off their victims under a promise
14 of confidentiality, and so it's, I think, a controversial area.

15 MR. SMITH: Well, I don't think the non-disclosure
16 agreements that your Honor is referring to potentially from the
17 MeToo cases over the last four or five years really are what
18 this program was about. So the types of programs, and this
19 program, indeed, that Mr. Feinberg and others have worked on
20 and structured, such as the 9/11 Program and allegations of
21 sexual abuse in the Catholic Church have really efficiently
22 dealt with hundreds and hundreds of claims in a way that
23 benefits the victims --

24 THE COURT: And that's laudable. No one could be
25 other than impressed by that, but I don't think that's

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1 dispositive -- I'm still not understanding. Let's assume for
2 the sake of argument that these documents were provided on a
3 attorneys' eyes only basis so that they could, for example,
4 make use of summary information on a confidential basis in
5 submissions in class certifications so they might want to
6 argue, for example, on class certification that we now know
7 that the situations involving these victims are also
8 *sui generis* that there shouldn't be a class. And I might
9 accept that or reject it, but the point is, they would be in a
10 much better position to make that kind of argument if they knew
11 about all the particulars that had been furnished in your
12 program. But if we kept it to attorneys' eyes only, I'm not
13 sure why anyone is harmed.

14 MR. SMITH: Well, there are several instances of this.
15 Claimants came in as part of the program, spoke to Ms. Feldman
16 and her colleagues in the program and were quite explicit, they
17 had never told the details of what happened to them to any
18 other person before, and now those details will be shared with
19 a class of people in violation of the promise of
20 confidentiality to induce them to participate in the program.
21 It's a --

22 THE COURT: It's a class of people, if we limit it to
23 attorneys' eyes only, would be a rather small class -- a
24 wealthy class, admittedly, but a small class -- and given the
25 attorneys we have in this case, I don't have any hesitation in

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1 believing they would adhere very strictly to any limitation to
2 attorneys' eyes only.

3 MR. SMITH: But your Honor would have to agree that is
4 just an interim step, and the limitation on the use of the
5 materials is not just for the class certification process.
6 Once the materials go over into the hands of JPMorgan and the
7 other lawyers in this case, it's for all purposes in discovery.
8 And I think, your Honor, the part about --

9 THE COURT: That's right, but it's also still
10 limited -- none of it can be disclosed because it's attorneys'
11 eyes only. And the disclosures, if any, are governed by this
12 Court, and, of course, if I made any disclosures at all, I
13 would only do so after giving you first an opportunity to be
14 heard.

15 MR. SMITH: Well, your Honor notes the potential for
16 the application, opposing class certification, could be better
17 or stronger if JPMorgan had access to these individualized
18 statements. There is -- and this goes to the need aspect of
19 getting through the *Telligen* standard, the heightened standard
20 that applies to mediation materials, there's a wealth of
21 material that's available to JPMorgan.

22 As I think someone noted, they've been investigating
23 these issues for years. There are scores of publicly filed
24 lawsuits with individual detail about the abuse that the
25 victims suffered. There's information --

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1 THE COURT: Wait a minute. I don't understand how you
2 -- how that's consistent with the argument you just made. If
3 you think 98 percent of what you have is already a matter of
4 public, then no one can complain about your turning over the --
5 because there is no confidentiality because it's all out there
6 in the public domain.

7 MR. SMITH: I'm not saying 98 percent, your Honor.
8 I'm saying there is sufficient sample size of information about
9 the abuse that victims suffered with Jeffrey Epstein and others
10 in the public record and in the hands of others where it is not
11 subject to confidentiality of the program. And that's on the
12 public docket in scores of lawsuits. It's in the hands of
13 statements --

14 THE COURT: Your position has got to be, if I
15 understand it, that -- for example, let's take the two I just
16 referred to. Request number 7. Documents to show the total
17 number of applicants that the program approved for any
18 compensation and the reasons for those approvals.

19 Let's just take the first part of that. Documents
20 sufficient to show the total number of applicants that the
21 program approved for any compensation. What possible objection
22 would you have to that?

23 MR. SMITH: We didn't have an objection to the number.
24 We gave them the number of applications that were approved.

25 THE COURT: So and then -- and if the reasons for

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1 those approvals did not include the names of the persons, this
2 is really -- I'm not sure -- it's really the program's thought
3 processes that are being revealed there, which may not be
4 relevant. That's a different question.

5 MR. SMITH: I think your Honor already observed that--

6 THE COURT: But I don't see the confidentiality being
7 implicated.

8 MR. SMITH: If we got to that level, we'd have some
9 pretty thorny issues of attorney-client privilege in there
10 since Ms. Feldman is an attorney and had attorneys on her staff
11 making those determinations. So the reasoning beyond approval,
12 which is really the question --

13 THE COURT: Okay. And of course any document demand
14 can always be accompanied by a claim of privilege on
15 particularized documents, so...

16 MR. SMITH: If your Honor is moving on to request
17 number 8, we also gave them the number of applications that
18 were denied. I've been talking about the total number of
19 claims made --

20 THE COURT: How about -- because this has been an
21 issue in this case in the scope of releases. So request number
22 12: All releases, including drafts and final versions, whether
23 executed or non-executed, and all communications concerning the
24 releases.

25 Now, let's assume that I found that overbroad and

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1 limited. For example -- I'm not making any ruling now, but
2 just, for example, to all releases. Again, with the names
3 redacted and so forth, where's the harm there?

4 MR. SMITH: Well, number one, we gave them or offered
5 to give them a blank form of the release. I might note here
6 that we've had similar discussion with the attorneys for
7 Deutsche Bank who served a similar subpoena on us. We worked
8 it out.

9 THE COURT: Yes, because they're relying on arguments
10 about the release in their case.

11 MR. SMITH: And they have the form of the release. I
12 believe it we made it available to JPMorgan. The program's
13 perspective covered by the promise of confidentiality, there's
14 an alternative source for this. This whole argument about
15 central repository, that's a matter of convenience for
16 JPMorgan. If they put the work in your Honor, and they have
17 resources -- sometimes we talk about we're up against the
18 government. The government has unlimited resources.
19 JPMorgan & Co. is the next best thing they have virtually
20 unlimited resources, and the estate has copies of all these
21 releases because they're a party to the releases. If they want
22 the releases, they can subpoena the estate. And then deal with
23 the question of redacting names with the estate.

24 The program, which is founded on this promise of
25 confidentiality and all the benefits to the litigants and

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1 society more generally -- think about the next time one of
2 these programs is designed, your Honor. Without the promise of
3 confidentiality, it just won't be as effective. So we're not
4 just talking about the claimants in this particular case, the
5 130 successful claims, and the others who were denied.
6 Obviously, they still get the promise of confidentiality too.
7 We're talking about the next situation that involves sensitive
8 details of personnel abuse, sexual or otherwise, who would be
9 willing to participate in a program on a confidential basis but
10 not willing to participate if it involved the prospect of what
11 your Honor is sketching out here; that their details are first
12 made available to many lawyers who will keep them to themselves
13 potentially, but then on the slippery slope to later disclosure
14 in a litigation. That's not what these folks signed up for, in
15 fairness to them and future claimants.

16 THE COURT: But, you know, they knew because it says
17 it right in the agreement, which you now tell me was a court
18 order, that there were possible limitations to this. It says
19 it right in the agreement. You know, the most basic principle
20 of all is a party and a court is entitled to every person's
21 evidence. That's a principle that goes back about a thousand
22 years in the common law of England and carried over here.
23 Privacy is a very important contrary of consideration, and I
24 don't want to be misunderstood. I take that very close to my
25 heart in a case like this. But it's not a right for a private

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1 citizen to say, okay, I want some money because I've been done
2 wrong, and I'll sign up to get that money, and anything I
3 provide you with is, as a matter of law, universally without
4 disclosure of any kind whatsoever. And, therefore, where the
5 agreement says that all confidentiality requirements are
6 subject to law, regulation and judicial process, I, the victim,
7 say I understand that that means zero, and is just some
8 language some lawyer put in there and some court approved.
9 That can't be right.

10 MR. SMITH: I'm not suggesting it's right. I'm
11 suggesting the law, regulation, and judicial process is the law
12 in the Second Circuit decision in *Telligen*, and further
13 extended by the *Accent Delight* case by Judge Furman, and we
14 think that standard applies here. They've not shown heightened
15 need. The materials are available elsewhere. And --

16 THE COURT: I apologize, but I do want to give your
17 adversary one last shot to be heard.

18 Is there anything else you want to say.

19 MR. SMITH: Yes, because the suggestion that redaction
20 is the solution is a solution that would be, I think for the
21 program such as it is, there's no program any more. It's shut
22 down. There's no staff. There's the administrator, and I
23 think one lawyer working with her, moving on to other projects.
24 In the Maxwell case in front of Judge Nathan, which was quite a
25 limited different application, different interest at stake, the

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1 materials relating to four witnesses were ordered to be turned
2 over, but just the submissions, nothing else. There were 6,000
3 pages of material for four. We have hundreds of claim files.
4 And to go through them and redact -- they're not readily
5 available. They're not in a searchable database. They're just
6 sort of sitting electronically offline. To say to go in and
7 pull those and redact out names, that's a project that will
8 take many more lawyers than are in this courtroom many, many,
9 many hours to get done.

10 THE COURT: I don't know about that. If I used the
11 lawyers in this courtroom, they'd get it done in about two
12 minutes, but the -- but maybe the argument is that to the
13 extent you have to use time of lawyers who have already -- who
14 are no longer involved, that they need to be paid by JPMorgan.

15 MR. SMITH: Well, I suppose that's up to JPMorgan and
16 maybe we can work something out. I'm talking about --

17 THE COURT: I don't think it's up to JPMorgan. I
18 think it's up to me.

19 THE COURT: I'm talking about burden on the
20 administrator, Ms. Feldman, who -- the program is essentially
21 shut down. I think has one lawyer on staff and maybe an
22 assistant that this falls to her and then to, in the first
23 instance, figure out what's there. I'm making a burden
24 argument under --

25 THE COURT: Let me ask you this: When was this

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1 program shut down?

2 MR. SMITH: That's a very interesting question because
3 under the protocol, one year from final date.

4 THE COURT: That's what I'm asking.

5 MR. SMITH: More than a year ago, so but the
6 subpoenas --

7 THE COURT: So why do you have anything if according
8 to this what you say is an order, it says to protect the
9 privacy of claimants participating in the program, all personal
10 information provided by the claimant during the process will be
11 returned or destroyed within one year after the conclusion of
12 the program. So have you done that?

13 MR. SMITH: Not yet. In part, because of the
14 litigation in front of Judge Nathan, and in part because there
15 was an ongoing process to clear liens with respect to many of
16 the claims. And that process didn't wind down -- there was
17 still -- the year hadn't finished yet and the subpoena from
18 JPMorgan was served, so ...

19 THE COURT: Thank you very much.

20 Let me hear from JPMorgan.

21 MS. ELLSWORTH: Thank you, your Honor.

22 Just briefly on the confidentiality concerns that the
23 Court was discussing with counsel, we agree with the Court that
24 a protective order, including modifications, to make the
25 production subject to attorneys' eyes only, outside counsel

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1 eyes only, whatever appropriate modifications the Court may see
2 fit to protect confidentiality would be the way to address that
3 articulated concern.

4 THE COURT: Let me ask you this: I understand that
5 the program offered you a compromise, which was a chart showing
6 the total number of individuals who applied to the program
7 through the registration or claims filing process.

8 Second, the total number of claimants who applied to
9 the program.

10 Third, the total number of claimant deemed ineligible.

11 Fourth, the total number of claimants deemed eligible
12 who received an award and signed a release.

13 Five, the total number of claimants deemed eligible
14 who declined an award or did not timely respond within the
15 response deadline.

16 And, sixth, the aggregate amount of payment made to
17 eligible claimant who received an award and signed a release.

18 Now, putting aside the fact that that makes me a
19 little skeptical of your adversary's argument about how
20 burdensome this is all going to be, because it's certainly
21 going to have to do a lot of review to supply the chart, but
22 why isn't that sufficient for your immediate purpose?

23 MS. ELLSWORTH: Your Honor, we do have that chart.
24 It's actually Exhibit 1 to our letter brief, and the Court has
25 it as well. I agree that it does seem to undercut a bit the

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1 arguments of burden that we heard there at the very end.

2 What it does not provide is any information about the
3 types of claims that were submitted and how differently
4 situated or not the individuals who submitted claims were,
5 whether they were granted some compensation or a larger amount,
6 a smaller amount, if they were rejected compensation, the
7 information that was provided goes to the questions that the
8 Court will have to consider at class certification, including
9 commonality, including whether the named plaintiff is typical,
10 typicality, of the class she seeks to represent, and including
11 some of the questions that relate to the predominance of the
12 injuries suffered by the named plaintiff here versus the
13 members of the class.

14 THE COURT: What about -- since your immediate reason
15 for this demand relates to the class certification, what about
16 a requirement that in addition to being attorneys' eyes only,
17 that all the information be returned and no record kept of it
18 by your client after class certification is resolved.

19 MS. ELLSWORTH: I think that could be a possible
20 compromise. I would want to think there -- one aspect of the
21 request we made does relate to the named of plaintiffs and
22 certain information. We have information provided by the
23 plaintiff that was submitted. What we don't have is what was
24 considered by the program in determining what relief to grant
25 that individual. I think if the class is not certified, then

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1 returning all that information would potentially be a
2 compromise. I'd have to understand what is in there to know
3 whether there's some other merits reason that that information
4 might be --

5 THE COURT: Well, you could always reapply upon a more
6 specific showing as to an individual file or something like
7 that.

8 All right. Here is where I think I come out, and this
9 is not going to resolve this until next week, but it gives you
10 the -- I think there are at least some of these requests that
11 the Court will grant. I think many of them are overbroad and
12 will have to be narrowed, and some I may not grant at all.
13 Those I do grant will be granted on attorneys' eyes only and
14 with the qualification that all documents -- no copies could be
15 made, and all documents provided have to be returned to the
16 program after class certification is resolved. But with those
17 limitations, I think there will at least be some of this that I
18 will grant.

19 To move this along, notwithstanding now that we've
20 extended the trial endlessly to what, oh, 2029 -- no, it's
21 October 23, 2023 -- I will get you an order on this by the end
22 of next week.

23 MS. ELLSWORTH: Thank you very much, your Honor.

24 MR. EDWARDS: Your Honor, may the Does be heard on
25 this issue?

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1 THE COURT: Yes.

2 MR. EDWARDS: And, just briefly, your Honor, a couple
3 considerations. One, even if your Honor is going to grant
4 this, at least in part, were to be turned over for attorneys'
5 eyes only, if we were to do that, the names of the individuals
6 victims are totally irrelevant for class certification
7 purposes.

8 THE COURT: I'm sorry, I meant to add that, and the
9 name -- while it will be turned over, it will redact the names.
10 Thank you.

11 MR. EDWARDS: Because I know what these submissions
12 consisted of. In fact, with respect to the named plaintiffs in
13 this case, we have no objection to those records being turned
14 over. We've turned them over. We have no problems from the
15 program. But because the submissions also include the names of
16 other victims, for instance, the way in which this scheme
17 worked --

18 THE COURT: That's why we're going to redact the
19 names.

20 MR. EDWARDS: Okay. Family members other identifying
21 information such as that.

22 THE COURT: Yes, anything that on its face would
23 identify who the person was will be redacted. But that's not
24 the same as saying, oh, if you wanted to do a lot of homework
25 after you've got this, you might be able to figure out who that

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1 is. That would be too burdensome I think and too impossible to
2 carry out. But family members, yes, that will also be
3 redacted.

4 MR. EDWARDS: We would also ask in that same vein that
5 medical records not be produced as well. They would be
6 identifying, probably violate HIPAA as well, but not something
7 that's going to be play into the class certification.

8 THE COURT: I'm not sure they asked for medical
9 records.

10 MR. EDWARDS: That's part of the submission, so I just
11 didn't want that to be included, even though it might not have
12 been specifically requested.

13 THE COURT: Anyway, yes, I agree. No medical records.
14 By the way, on that one, as opposed to the other ones, if after
15 receiving the information JPMorgan thinks that in a particular
16 case it is vital for class certification purposes for them to
17 have the redacted medical records without the name, but what's
18 in -- I doubt that will be the case, but I will give them leave
19 to then separately apply, and you'll be heard, of course, in
20 opposition.

21 MR. EDWARDS: Thank you, your Honor.

22 Also, the time frames for complaints against JPMorgan,
23 the earliest timeframe begins 1998. There were victims that
24 were abused prior to that that would in no way fall within the
25 class. I don't think that it would be discoverable then for

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1 their files to now be turned over, especially given the fact --
2 and I think that your Honor has --

3 THE COURT: Why isn't that potential -- it may not
4 relate to class certification, you may be right about that. If
5 the case were to go to trial, it would be 404(b) material. But
6 maybe you're right, it doesn't have anything to do with class
7 certification.

8 MR. EDWARDS: Yes, your Honor. So at this stage I
9 think that would just -- that would not appropriate.

10 THE COURT: I want to hear from your adversary on that
11 one.

12 MR. EDWARDS: Okay. Lastly -- and I think your Honor
13 touched on this -- there were two representations that many
14 relied upon, and I think that counsel for the program referred
15 to them as promises. And they were promises.

16 One was that this was going to be entirely
17 confidential for the victims, meaning it was a one-way street.
18 If the victim chose at the program to disseminate information,
19 they could. And that goes along with the rights of crime
20 victims. But the program would not.

21 And so some of these individuals that applied to the
22 program, they relied on that promise is when they applied to
23 the program. And I understand are there are exceptions to
24 that. Not only that promise. It was the promise that as soon
25 as it was over, their documents would be returned or destroyed,

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1 and they have all believed that their documents had been
2 destroyed, only to now find out -- and probably not even now,
3 when the press reports it tomorrow -- that these promises upon
4 which they relied were false, promises and now to their
5 detriment there is going to be a large class of --

6 THE COURT: Wait a minute. If you're saying that the
7 program did not fulfill its contractual duty, then that's -- I
8 suppose they would have a claim against the program. But if --
9 I mean, I'm reminded, and this is not a perfect analogy, but it
10 is I think relevant. So every company has its document
11 "retention policy" which really means a document destruction
12 policy. And all documents are supposed to be destroyed every
13 three years, whatever it is, depending on the company, but once
14 litigation has started, that automatically comes to a halt.

15 And as I understand it, the reason apparently why
16 initially this came to a halt was in Judge Nathan's case. At
17 least that's what I understood from what the attorney for the
18 program says.

19 MR. EDWARDS: That didn't stop the time limit for the
20 entire destruction process. That related to the four victims
21 that were testifying in that particular case. But --

22 THE COURT: Well, if it didn't, then the question is
23 why hasn't it been destroyed?

24 MR. EDWARDS: We're still asking that question, but
25 there's going to be victims asking that question tomorrow

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1 morning.

2 THE COURT: Let's find out from the program counsel
3 why that hasn't happened.

4 MR. EDWARDS: Thank you, your Honor.

5 THE COURT: Thank you. I do want to hear from
6 JPMorgan in a minute on that one aspect, but let me hear from--

7 MR. SMITH: On that point the program wasn't wound up,
8 the year hadn't run, and because there was still cleanup to do
9 with respect to lifting liens, with respect to certain
10 Medicare, Medicaid benefits, I think it is, the work of the
11 program wasn't done. The year was running, and we got the
12 subpoena. So, you know, we were really right at the edge and
13 the implementation of the retention policy was about to be
14 acted on, we got the subpoena. It was very poor timing, as it
15 turned out.

16 THE COURT: Let me hear from JPMorgan.

17 MS. ELLSWORTH: Thank you, your Honor. Two points
18 that I wanted to make or address. First, as to Mr. Edwards
19 mentioned medical records, what we have seen in the one
20 submission that we've seen is medical record was the only thing
21 that was submitted to the program. There's a formd that was
22 filled out and a narrative, but in terms of some of the
23 information factual information that allowed the program to
24 make determinations about preexisting conditions, et cetera,
25 that was all in medical records and evaluations. So I heard

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1 the Court to say that maybe medical records --

2 THE COURT: I don't see how it relates to class
3 certification.

4 MS. ELLSWORTH: Well, it relates to whether there are
5 any preexisting conditions that any individual victim had that
6 either affects the compensation that the program was willing to
7 give them or affects --

8 THE COURT: How does that relate to class
9 certification?

10 MS. ELLSWORTH: Again, it relates to whether damages
11 can be determined on an individualized or class-wide basis,
12 among other things. It also relates to the different aspects
13 of alleged trafficking, and the force, fraud and coercion
14 requirement that needs to be shown and whether there are
15 different victims who are differently situated in terms of
16 their interactions with Epstein. So I think the medical --
17 I'll be happy to come back with another application if we get
18 information and it turns out that the medical --

19 THE COURT: I think I'm still going to exclude the
20 medical records without prejudice to your coming back in any
21 individual case and saying we need the medical records for this
22 particular person and here is why, and then we will deal with
23 that then one way or the other.

24 MS. ELLSWORTH: Okay. I will tell your Honor, I think
25 we will be back before you on that, but I'm happy to wait and

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1 see what we get --

2 THE COURT: It's always a pleasure to have you back.

3 MS. ELLSWORTH: Your Honor asked about information
4 outside of the class period or application for individuals.

5 THE COURT: Yes.

6 MS. ELLSWORTH: To the extent that there is no
7 allegation of abuse that takes place within the class period, I
8 don't think we're seeking that, but there are many
9 individuals--

10 THE COURT: Where there is a continuing abuse.

11 MS. ELLSWORTH: Yes.

12 THE COURT: Well, I agree with that. If you're not
13 seeking it for ones that ended before the class period, they
14 don't have to produce that, but they do have to produce --

15 MS. ELLSWORTH: If there's anybody that falls within
16 the proposed class definition, then that --

17 THE COURT: But I'm going to -- one thing that I think
18 should be made clearer, including to any victims, a lot of
19 these requests have nothing to do with any individual victim
20 and don't reveal even on their face anything of a personal or
21 private nature. It's one thing that's already been provided
22 documents sufficient to show the total number of applicants.
23 That's a number. All releases -- I may limit that to all
24 signed releases -- but, in any event, all releases with the
25 names redacted. That's of relevance, if at all, because of

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1 important arguments that have already been made in this case
2 about the scope of the class, who was released, who was not
3 released, and so forth, and has nothing to do with any
4 individual's personal private information.

5 I'm not sure whether I'm going to grant this, but
6 documents showing why the program decided to award to some
7 victims and not to award to others, and putting aside any
8 attorney-client privilege or any other privilege that might or
9 might not apply to that. I don't see once the names are
10 redacted how that's likely to get into anything that would
11 compromise the privacy of any individual.

12 If you are told, we decided to reject individual
13 unknown X because that individual could not show any injury,
14 you know, something in that broad form doesn't implicate
15 privacy.

16 Would the medical records that are relevant to that
17 maybe implicate privacy? Yes, that's why I'm at least
18 initially excluding medical records.

19 Some of the other things that I've already excluded,
20 and most obviously the name, implicate privacy? Of course.

21 So that's why we're counting that all out.

22 But I think the -- I suspect that these documents as
23 now limited and, of course, limited to attorneys' eyes only,
24 will be ones that probably no victim in fact would object to
25 turning over if they could actually see it. And, of course,

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1 the victims themselves retain the right to disclose
2 information. That's not the issue here. They're not being
3 asked for their permission. But I think the -- it's the
4 assertions of privacy here can be easily protected in all
5 relevant ways by the many limitations that the Court has now
6 already indicated it is going to impose, as well as further
7 limitations on the scope of particular requests that I will
8 make evident in my ruling next week.

9 MS. ELLSWORTH: Thank you, your Honor. We do, of
10 course, takes the confidentiality obligations very, very
11 seriously, and I know your Honor understands that.

12 THE COURT: Very good. Thanks very much.

13 All right. So moving right along. The next item is
14 the plaintiffs motion seeking production of documents from
15 prior to 2006. So let me hear first I note for the record that
16 this motion was filed without the Court having expressly
17 granted leave to file the motion in violation of my individual
18 rules, so naughty, naughty, but I don't think it was a
19 significant violation. So let me hear from moving counsel.

20 MR. VILLACASTIN: Good evening, your Honor.

21 Andrew Villacastin from Boies Schiller Flexner.

22 On the procedural matter, our understanding was when
23 we spoke to chambers, that we raised that we would have issues
24 slight variations from the --

25 THE COURT: I'm sorry, I granted the Virgin Islands

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1 leave, but I didn't grant leave to Jane Doe.

2 MR. VILLACASTIN: Right. Our understanding from the
3 conference, it wasn't reflected in the email order explicitly,
4 but --

5 THE COURT: And it's really -- I just couldn't resist,
6 but in any event, it's not a violation that I considered of any
7 materiality whatsoever.

8 MR. VILLACASTIN: Thank you for saying that.

9 I think at 7:00, you yourself said that evidence
10 predating 1998 would be relevant under Federal Rule of Evidence
11 404(b). Five minutes later, Ms. Ellsworth said she would be
12 seeking documents from 1998 onwards from the Epstein Victims
13 Compensation Program. Our motion for the same reason as
14 seeking documents from 1998 to 2000, which is a run period that
15 exists after the Court granted USVI's motion at Docket 73 on
16 March 9. We are requesting that the date for our discovery go
17 back two years to 1998, which is to encompass our class period.

18 I don't think there's a real argument that document
19 discovery into 1998 would be relevant. So the knowledge would
20 shift to any burden arguments that the other side would have.
21 We have asked them to substantiate their burdens. We have not
22 received any number substantiating that burden.

23 I will point to their brief where in a footnote on
24 page 8, they say they have not even collected ESI or can
25 confirm its existence, and therefore, you know, they have no

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1 basis to oppose this request. So unless the Court has any
2 questions --

3 THE COURT: Well, let me hear from the opposition.

4 MR. BUTTS: Good evening, your Honor. I will be brief
5 on this. I will start where you started, which is the absence
6 of the request or the permission to file. I'm not standing on
7 that, but it's relevant in this way. You didn't give
8 permission to file because they didn't ask for it because they
9 never raised this issue for us. This was a negotiated process
10 where the parties would negotiate a custodian's burden in the
11 context of burden, custodian search terms, 300 of them, and
12 time period.

13 And in the record before you is the documents where we
14 identified the custodians from 2000 to then 2013. We took it
15 forward. The Virgin Islands had an issue with the end date.
16 Nothing in that record about anything of 1998 and 1999. They
17 asked for more custodians, and we offered a number from --
18 because of the burden with particularized periods for
19 individuals positioned in relevant spots, right, JPMorgan's a
20 big company, employees move around the company a lot, decades
21 does not make sense for every person. We see in that, and it's
22 also in the record before you, those we had particularized
23 periods for in the second, and the earliest was 2006, which was
24 really an inflection point in this case when Mr. Epstein was
25 arrested in Florida, his first arrest.

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1 And the response back from Ms. Singer, but with a note
2 that she was speaking on behalf of both plaintiffs, because
3 we've been dealing with discovery in a consolidated way, is:
4 Thank you for the compromise. Please add these three
5 additional custodians which we negotiated over time. To be
6 sure, there was lots about the notion of 2013, we extended to
7 '14. It was the subject of a separate motion. We're executing
8 your Honor orders to take that out to 2019, but there was never
9 the idea that, oh, and also '98 and '99.

10 What we got when we were inspecting the Virgin Islands
11 motion on the tail end was the pair move of, well, we'll at the
12 couple years to the front end. So it was never discussed in
13 that context, and I think it's improper in that regard.

14 The other thing is there really isn't a reason for it.
15 It's an arbitrary notion that the Doe plaintiffs are here
16 trying to say let's have a class starting in 1998. Ms. Doe
17 alleges specifically she was -- claims to have been victimized
18 between 2006 and 2012. When you look at the body of her
19 complaint, which we have cited in the papers, and there's no --
20 nothing contrary from Ms. Doe's side is the allegations about
21 what JPMorgan's conduct supposedly changed based on Mr. Staley,
22 and the allegation is expressly around 2000, Mr. Staley gets
23 involved with Mr. Epstein and develops this relationship and
24 the case goes on.

25 So the period that we offered was tied to those

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1 allegations. It was never any contrary argument. There was
2 never any requests for permission to come in at 1998 and 1999.
3 And, candidly, this is an exercise in adding burden when we're
4 moving through quite a lot of things on an appropriate
5 schedule.

6 The reason that counsel points out, and we pointed
7 out, that we have not collected 1998 and 1999 is because it was
8 always dealt with as a -- in the context of negotiations that
9 we were starting off in 2000.

10 THE COURT: The one thing I'm a little unclear about,
11 so did you agree as part of these negotiation to go back to
12 those two years for certain limited purposes, or not at all?

13 MR. BUTTS: Not at all, because it was never asked.
14 We always started at 2000, and so 2000 --

15 THE COURT: That answers my question. So back to
16 moving counsel.

17 MR. VILLACASTIN: I will say that our request for
18 production to define a date period of 1998 through 2019, 1998
19 is not arbitrary. It's our class definition of people who were
20 abused from 1998 onward. There's also the -- it's coterminous
21 with the banking relationship between Jeffrey Epstein and
22 JPMorgan.

23 Now, you know, he is talking -- Mr. Butts is talking a
24 lot about agreements. However, there was no clear agreement
25 which is evidenced by the fact that both the USVI and Jane Doe

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1 filed motions to compel. I will note that there were side
2 discussions between JPMorgan and USVI. I will direct the Court
3 to docket 52-3, which reflects emails between February 8 and
4 February 12. Generally, our position is that while we may have
5 been backfilled on some of it, it was never our understanding
6 that we were giving up two years. And I think if Mr. Butts is
7 raising some sort of due process or procedural issue, I think
8 he's been on notice of our position, at least since February 23
9 when we filed our motion, and I do believe, even though I
10 wasn't on the call myself, that we did preview the issue when
11 we called chambers.

12 THE COURT: All right. So I think that tells me what
13 I need to know. And I will again resolve this brought by an
14 Order issued no later than the end of next week.

15 MR. VILLACASTIN: Thank you, your Honor.

16 THE COURT: Now the next item is two motions that were
17 raised telephonically. One I previously denied, but I think
18 the other is still alive. And this is a motion of the Virgin
19 Islands to compel JPMorgan to answer two of its
20 interrogatories. The interrogatories are interrogatory number
21 3. Identify all consultants and investigators you retained to
22 assist, assess, implement, test, or improve your BSA/AML
23 compliance program.

24 And the second interrogatory, number four: Identify
25 all individuals who served on board or staff committees

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1 involved in your BSA/AML compliance program, including, but not
2 limited to, the compliance committee established pursuant to
3 the consent order and the officer responsible for
4 communications to the office of the comptroller of currency,
5 and indicate the dates of their service.

6 And the Virgin Islands also I think has applied to
7 compel compliance with certain subpoenas on "Topic 21." And I
8 asked for the description of Topic 21, and Topic 21 is "Your
9 knowledge of Epstein's sex trafficking scheme described in
10 paragraphs 2033 of the Virgin Islands first amended complaint."

11 Now, interrogatories under local rules of the Southern
12 and Eastern Districts of New York -- no, this rule is only a
13 Southern District Rule 33.3(a).

14 "Unless otherwise ordered by the Court,
15 interrogatories will be restricted to those seeking names of
16 witnesses with information relevant to the subject matter of
17 the action, the computation of each category of damage alleged
18 in the existence, custodian location and general description of
19 relevant documents."

20 So these two interrogatories are apparently directed
21 at finding out the names of witnesses with knowledge of
22 information relevant to the subject matter of the action.

23 So let me find out whether there is still opposition
24 to comply with those two interrogatories, and if so, on what
25 basis?

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1 So this would be question to JPMorgan.

2 MR. BUTTS: Yes, your Honor, there is opposition. I
3 don't think this needs to take the amount of time that some of
4 the other issues have taken, but --

5 THE COURT: I'm so disappointed.

6 MR. BUTTS: I'm sure. I am too, personally. But be
7 that as it may, those interrogatories have nothing to do with
8 Jeffrey Epstein. They are seeking over multiple decades
9 anybody who had anything to do with something related to
10 JPMorgan's BSA/AML compliance program. We're one of the -- we
11 are the fifth largest financial institution in the world.

12 THE COURT: Just because of my ignorance, what do
13 those initials stand for?

14 MR. BUTTS: The Bank Secrecy Act and Anti-Money
15 Laundering.

16 THE COURT: Go ahead.

17 MR. BUTTS: The only tangential tie of those issues to
18 the U.S. Virgin Islands' claim you heard about in some of the
19 motion to dismiss argument falls under that CICA claim. And
20 one of the predicates or CICA is the -- a federal felony, and
21 here what the effort to do is to make a failure to file a SAR a
22 federal felony to be a CICA predicate. It's conceded in the
23 papers. Everybody agrees. The only way you get to federal
24 felony standard with regard to a failure to file a SAR is a
25 willful failure to file a SAR. Was there a willful failure to

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1 file a SAR with regard to Jeffrey Epstein? Not, "How is your
2 program? Could have been better here? Was it great here?" If
3 I came in and said, "We've got the best program over here, but
4 there was a problem with Jeffrey Epstein," none of it matters.
5 So our view is wildly overbroad, not relevant, and therefore
6 not tied to the local rule.

7 And on top of that, this is a high-burden exercise by
8 dint of the time period and by dint of the breadth of JPMorgan.

9 Thank you.

10 THE COURT: Let me hear response.

11 MS. SINGER: Yes, your Honor, so I think the request
12 is relevant to both of the U.S. Virgin Islands claims in the
13 case, both the TVPA and the CICA claim, including its bank
14 secrecy act predicate. And your Honor asked what the acronym
15 stands for the BSA/AML program at JPMorgan Chase was the
16 program responsible for ensuring compliance with respect to
17 Jeffrey Epstein's accounts. So that is the compliance program
18 that was at issue in this case.

19 THE COURT: Yes, but the -- remember, this is an
20 interrogatory, and it's very broadly worded. You presumably
21 are taking a 30(b)(6) witness and you might ask the 30(b)(6)
22 witness to address how the program ran, and whether there were
23 any special circumstances related to Mr. Epstein and so forth
24 and that might generate rate a further request for documents or
25 depositions. But here you're just very broadly saying

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1 identify -- all of this as number 3. Identify all consultants
2 and investigators you retained to assist, assess, implement,
3 test or approve this overall compliance program over a period
4 of many, many years. That seems to me overbroad.

5 MS. SINGER: So it is, your Honor, for the time period
6 for the discovery, right, which for the Virgin Islands is 2006
7 through 2019, and there's a particular context that is relevant
8 here. So Jeffrey Epstein was a client of the bank, and
9 although he continued to do business with them, he was a client
10 until 2013. In 2013, JPMorgan Chase also entered into a
11 consent order with the Office of the Comptroller of Currency,
12 and that consent order acknowledged widespread failures in the
13 BSA/AML compliance effort that are four-squared with the
14 allegations of this complaint; that they were not only a
15 failure to file SARs, which was why --

16 (Continued on next page)

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1 THE COURT: Well, and if that's a consent order, so of
2 course, to the extent that's relevant, it's admissible on its
3 face, right? It's a statement of a party adversary.

4 So what do you need? Everyone who was involved for
5 years with this program could find out, which I think is what
6 you want to find out, which was, did those failures in
7 particular relate to Mr. Epstein or in what way did they impact
8 the failure of the bank to cease doing business with him or
9 anything like that?

10 MS. SINGER: And let me speak to the generalized
11 particulars, if I may.

12 So in particular, the Office of Comptroller of
13 Currency consent order had specific requirements that JPMorgan
14 Chase first do a SAR look-back, Suspicious Activity Report
15 look-back, from 2013 backwards, to examine its failure to file
16 SARs. It also required separately an account and transactions
17 look-back, to look back to see if there were any failures in
18 compliance during that time period — again, the same time
19 period that Mr. Epstein was a customer of the bank. So we
20 think that process in the specific either touched or didn't
21 touch Epstein's accounts and are relevant for either reason.
22 Certainly, to the extent that JPMorgan Chase went back and
23 looked — and I don't want to run afoul of FinCEN requirements
24 that talk about filing of SARs, but to the extent JPMorgan did
25 not file a SAR, hypothetically, during that period, and looked

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1 back to figure out why that was, that's directly relevant.
2 Same to financial transactions that showed cash payments, when
3 Epstein is an individual who trafficked in cash, quite
4 literally. He paid his victims and recruiters in cash and also
5 sent wire transactions, none of which, as our complaint
6 alleges, were picked up and reported, picked up and acted on,
7 in the context of due diligence. So there is an
8 Epstein-specific point. There is also —

9 THE COURT: Yes, but I don't understand how receiving
10 from them, if I allowed these interrogatories, this endless
11 list of names will help you with respect to that particularized
12 argument. It sounds to me like something you want to put to a
13 30(b)(6) witness.

14 MS. SINGER: And the issue there, your Honor, is that
15 JPMorgan has resisted any discovery related to its general
16 compliance program, its BSA/AML compliance program or the OCC
17 consent order. So that's not going to get covered in the —

18 THE COURT: Well, let me ask you this. Where do
19 things stand on the 30(b)(6) witness?

20 MS. SINGER: The 30(b)(6) is scheduled — the first
21 day of it is scheduled for the 29th of this month.

22 THE COURT: And have you requested, as one of the
23 subject matters to be covered, information about how this
24 program worked and how it applied, if at all, to Mr. Epstein?

25 MS. SINGER: We did, your Honor.

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1 THE COURT: And was that refused?

2 MS. SINGER: Well, I don't have the full state of
3 play, and I apologize for that. I know that anything related
4 to Mr. Epstein's accounts specifically has been agreed to and
5 is either being covered in the 30(b)(6) deposition with
6 document productions or deposition upon written questions.

7 THE COURT: Here's what I think. Well, let me ask
8 JPMorgan, on the more —

9 MR. BUTTS: I can speak to a lot of those issues.

10 THE COURT: Okay. And we'll come back to —

11 MR. BUTTS: There are substantial pieces of
12 information that were — this is a 28-topic 30(b)(6). There's
13 one topic, apparently, that's still at issue. We've resolved
14 all of the other ones. Some of them are by document requests
15 and some of them by interrogatories, and some of them by
16 testimony. Some of the things that we are doing is providing
17 budget and staffing levels for the BSA/AML compliance program;
18 we've provided every BSA/AML policy over the 20-year period
19 that's at issue; we've provided training documents related to
20 BSA/AML training; we are putting up a witness to talk about
21 efforts with regard to combating sex trafficking. We've
22 addressed Epstein six ways till Sunday. This is overkill
23 through this 30(b)(6) and, frankly, all of the discovery —
24 everything counsel said in their argument was about Jeffrey
25 Epstein. Nothing about Jeffrey Epstein is in those two

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1 interrogatories, and that's the issue that we're dealing with,
2 but in the context of the 30(b)(6), we are providing them
3 context plus.

4 THE COURT: All right. Let me go back to plaintiff's
5 counsel.

6 MS. SINGER: So, your Honor, the broader point I also
7 want to make — so with respect to the OCC order and
8 identification of the individuals who conducted those
9 look-backs, the SAR look-backs and the account and transaction
10 look-backs, is relevant to understanding what they did and
11 found with respect to Epstein and what they didn't do or find
12 with respect to Epstein. The OCC consent order also required
13 that JPMorgan engage outside consultants to do a wholesale
14 examination of its BSA —

15 THE COURT: Your interrogatories are not limited to
16 that. The first one is not limited at all. The second one
17 just says "including but not limited to," and then mentions
18 that one.

19 So here's my ruling on this one. This one I don't
20 think I have to wait. The two interrogatories are quashed
21 without prejudice to a more limited interrogatory being
22 propounded if, after the 30(b)(6) witness or witnesses have
23 testified, there is still information about who was involved
24 in, for example, the compliance committee established pursuant
25 to the consent order, so far as it bears on this case. I can't

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1 predict exactly how that would be framed. But the way they're
2 each currently framed, I think they are indeed overbroad. But
3 this is not a permanent ban. This is just until after the
4 30(b)(6) witness testifies.

5 MS. SINGER: Understood, your Honor. And we will do
6 that to the extent that there is still a need after the
7 30(b)(6) happens.

8 I would like to make, if I could, just one more
9 general point on this issue.

10 THE COURT: Yes.

11 MS. SINGER: Which is that the general context of
12 JPMorgan's compliance with the OCC consent order and the
13 effectiveness of its AML — its BSA/AML program is we believe a
14 relevant issue in the case, and it has been a point of dispute
15 throughout discovery, and in these interrogatories and the
16 30(b)(6) and requests for production, and all of the discovery
17 requests that were teed up in this chambers conversation, all
18 relate to that same point. And it's —

19 THE COURT: Well, you've indicated that. That's what
20 I'm here for. If you can't reach agreement, you need to bring
21 it to me and I'll resolve it. I can only deal with what you
22 bring to me.

23 MS. SINGER: Understood, your Honor.

24 THE COURT: So Virgin Islands said that it wanted to
25 compel compliance with subpoenas on topic 21, which is

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1 "knowledge of Epstein's sex trafficking scheme described in
2 paragraphs 20-33 of the government's first amended complaint,"
3 the government there being the government of the Virgin
4 Islands. And what were the subpoenas that there's opposition
5 to compliance with?

6 So let me hear from the Virgin Islands on that.

7 MS. SINGER: So this is — I think what your Honor is
8 referring to is topic 21 and topic 27. So this was a topic —
9 and again, let me just give you some context. So there were 28
10 different topics. We had narrowed this down through a
11 productive process of meeting and conferring. JPMorgan is
12 producing a witness on eight of them; the rest — two we've
13 withdrawn; the rest are being answered, as Mr. Butts said, by
14 interrogatory responses or document productions in another six
15 weeks. The two we couldn't agree on are 21 and 27. 21, it's
16 my understanding that JPMorgan's position is that we can figure
17 that out from documents. But in fact, what JPMorgan Chase's
18 knowledge was of Epstein's sex trafficking is a central issue
19 in the case.

20 THE COURT: So this is topics for the 30(b)(6)
21 witness?

22 MS. SINGER: That's correct, your Honor.

23 THE COURT: Okay. And I know what 21 is. What's 27?

24 MS. SINGER: 27 is in the same spirit of the
25 interrogatories. So topic 27 is any government investigations

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1 and/or actions against JPMorgan related to its BSA/AML
2 compliance program — that's the one that has *inter alia* — the
3 2013 consent order with OCC, communications with the OCC
4 leading up to the 2013 consent order, compliance with the 2013
5 consent order, and then a second action in the same time
6 period, which may be familiar to your Honor, which is a 2014
7 deferred prosecution agreement in connection with Madoff
8 investment securities, which involved the same BSA/AML
9 compliance program.

10 THE COURT: So I want to hear from your adversary, but
11 just looking at topic 21, it seems to be somewhat ambiguously
12 worded because what it says is, "your knowledge," meaning the
13 bank's knowledge, "of Epstein's sex trafficking scheme
14 described in paragraphs 20-33 of the government's first amended
15 complaint." So there are at least two ambiguities there. For
16 example, the first is, does that mean that if you have
17 knowledge of anything alleged in paragraphs 20-33, that's
18 responsive to this topic? So for example, paragraph 20 is,
19 "Jeffrey Epstein was a resident of the Virgin Islands." So
20 does the 30(b)(6) witness have to say, well, we knew that from
21 the following 14 bases? That seems not a sensible way to
22 proceed. A sensible way to proceed would be to supply the
23 documents. Then the item Number 22 in the complaint is,
24 "Epstein was a Tier 1 offender under Virgin Islands law based
25 upon his fraud or conviction of procuring a minor for

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1 prostitution." So does your topic mean that the 30(b)(6)
2 witness has to find out whether anyone knew whether Epstein was
3 a Tier 1 offender under Virgin Islands law? That seems
4 certainly an overbearing requirement. And then knowledge is
5 itself I think somewhat ambiguous. Normally when I see
6 30(b)(6) requests, they are more like, what information did you
7 have about this? "Knowledge" is a more loaded term. So I have
8 some question about that wording as well. But I think the
9 overall thrust of this is a legitimate matter to be inquired
10 into with the 30(b)(6) witness but I think it's mostly probably
11 directed at documents.

12 But let me hear from JPMorgan and then we'll come back
13 to plaintiff's counsel.

14 MS. SINGER: And I will tell you, your Honor, we did
15 not mean to be metaphysical, and the paragraphs were meant to
16 provide a frame for this, but those are certainly defects that
17 can be cured. And they may be —

18 THE COURT: Well, there's nothing like being
19 metaphysical, especially at 7:45 p.m.

20 MS. SINGER: It's the only way to be at this hour.

21 And just perhaps to aid in JPMorgan's response, the
22 reason we asked for information or knowledge — and I do
23 recognize the Court's constructive reading on that. So if we
24 revised this to "information," the reason we ask is because
25 there are things that are clearly reflected in documents —

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1 circulating news articles, due diligence reports, things like
2 that. What isn't reflected in the documents and we think is
3 core to the case and is most efficiently discovered through a
4 30(b)(6) are the things that JPMorgan — I don't want to use
5 the word "know" again — information it has from sources that
6 don't necessarily get reflected in documents.

7 So we know, for instance, that numerous JPMorgan
8 employees went to Jeffrey Epstein's townhome, which is
9 notorious for its artwork, naked pictures, massage rooms, etc.
10 We know that JPMorgan, in various documents, talked about
11 checking news sources and complaints, and the level of
12 investigation that we think was appropriate. That kind of
13 investigation would not necessarily be reflected in the
14 documents.

15 THE COURT: Okay. So let me hear from —

16 MR. BUTTS: Your Honor, this is being dealt with in
17 documents. It's being dealt with in a number of depositions.
18 One of — there are many challenges with this and, to use
19 Ms. Singer's word, this is a metaphysical interrogatory, and I
20 read it differently than apparently she meant the thrust of it
21 to be, and that's half the problem.

22 The other parts of the problem are all of the embedded
23 legal language in there. And let's start with "your
24 knowledge." You just heard lots of argument about what the
25 company's knowledge is and what Mr. Staley knows and in what

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1 context and to what extent that is —

2 THE COURT: No, I totally agree. I think if nothing
3 else, this has to be reframed, because "knowledge" is a loaded
4 term in the context of this case.

5 MR. BUTTS: On top of that, I submitted to Mr. Kern
6 the full list of the embedded allegations from the complaint,
7 paragraphs 20–23 of the complaint, and some of the things that
8 they're asking for knowledge about are the government's — the
9 Virgin Islands's lawsuit against Jeffrey Epstein's estate and
10 related individuals for violation of CICO and civil conspiracy,
11 which is recently settled, and Epstein-created network of
12 individuals who participated directly and indirectly and
13 conspired with him in a pattern of criminal activity, so on and
14 so forth. And paragraph 27, an illicit enterprise of Epstein
15 businesses and associated constituting what's referred to as
16 "the Epstein Enterprise," listing a number of companies.
17 There's issues in here too about associations-in-fact. And all
18 of those issues are legal in nature. They're disputed. And
19 that's why I come back to a JPMorgan case that you decided,
20 *JPMorgan v. Liberty Mutual*, where, to your point about
21 information, 30(b)(6)s are designed to learn facts, not legal
22 contentions and legal theories.

23 THE COURT: Yes, I agree with all of that, but also, I
24 think what I got from what plaintiff's counsel was just telling
25 me is they think there is information that is not in

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1 documentary form that is relevant, nevertheless, to their case,
2 and therefore a 30(b)(6) witness is the ideal witness to
3 identify what information JPMorgan collectively had.

4 So I think that, as presently worded, I'm going to
5 strike topic 21 and 27, but I think before the 30(b)(6) witness
6 testifies, these can be reworded in a much more narrow fashion
7 in ways that probably the Court will approve.

8 MR. BUTTS: A different topic would be a different
9 discussion. The parties — we've acted reasonably. I think,
10 you know, 28 requests and you're hearing about two of them —

11 THE COURT: I'm all for working it out. It sounds
12 like everyone's proceeding in good faith. But I make it very
13 easy. I call my system the "dial-a-judge" system because if
14 you can't work it out, all you need to do is get on the phone
15 and I'll work it out for you.

16 So I'm sustaining the objection to topic 21 and 27 as
17 currently worded, but before the 30(b)(6) witness testifies,
18 plaintiff's counsel can propound new narrower topics. 28 is a
19 funny number, where 30 would be so much more satisfying.

20 MR. BUTTS: Or 10.

21 THE COURT: And then if you can't work it out, you'll
22 call me, and I'm here and ready to decide.

23 MR. BUTTS: Yes. We were hoping that Mr. Kern had
24 some time to do some other work apart from this case. The one
25 thing I will say, we'll work it out. We've had success in that

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1 regard, albeit success through a number of pointed
2 conversations.

3 THE COURT: Yes. Let me just repeat. What I do think
4 should be provided is stuff related to information that was
5 available to JPMorgan regarding Mr. Epstein's sex trafficking
6 or similar conduct that is not reflected in documents.

7 MR. BUTTS: We can do that, your Honor. The one thing
8 I would say — you tied it to the upcoming deposition.

9 THE COURT: Oh, you're right. You're going to have
10 that —

11 MR. BUTTS: It may be a different designee, so the
12 parties —

13 THE COURT: That's fine. You'll just work it out.
14 That's fine.

15 MR. BUTTS: And your Honor, on that vein, could I ask
16 you to come back to a scheduling question. I know you're
17 probably getting to the end of your agenda. I just want to
18 make sure I leave here with —

19 THE COURT: I'm here till midnight if you want.

20 MR. BUTTS: Yeah. So the direction at the start of
21 the day was shift in trial date, the parties should come back
22 to you with a revised case management plan, and somebody's
23 written down the date we're supposed to do that. What I want
24 to make sure is there are deadlines, including one today, that
25 we think ought to be part of that. It's tied to — directly

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1 related to the EDCP issue.

2 THE COURT: Put in anything you think is relevant. So
3 you're not limited to the topics presently in the case
4 management plan, if you think there are other topics that ought
5 properly to be part of the case management plan.

6 MR. BUTTS: And it's the service of an expert report,
7 so we would not be serving it tonight.

8 THE COURT: Yes. All current deadlines are suspended
9 till I get the new schedule.

10 MR. BUTTS: Thank you, your Honor.

11 MR. HENNES: Including the Deutsche Bank case.

12 THE COURT: Yes.

13 MR. HENNES: Thank you, your Honor.

14 THE COURT: All right. So originally I was going to
15 end this proceeding at 8 because my wife and I were going
16 dancing at 8:30, which is our hobby, but she let me know
17 earlier today that unfortunately she slightly injured her toe,
18 and strangely enough, it wasn't for the usual reason, which is
19 my stepping on it. So I do have time for more if there's
20 anything else. But if you don't have anything else, then,
21 reluctantly — ah, we have a taker.

22 MR. TODRES: Yes. Andrew Todres for Deutsche Bank.
23 We can deal with this in two minutes, I think. I tried to
24 raise it earlier but we were told to try to raise it here if we
25 could.

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1 THE COURT: Okay.

2 MR. TODRES: So we have an issue in our case
3 concerning the productions that we've been receiving from
4 plaintiff in the document collection in the case. In
5 particular, we have now on two occasions determined that the
6 plaintiff's counsel has not collected email for multiple email
7 accounts for plaintiff that we know have highly relevant
8 responsive documents to our document requests. Originally, at
9 the outset of this matter, they told us that she had been
10 locked out of an email account that they were regaining access
11 to and that they would produce documents from it. After
12 initial production that contained only printouts from that
13 email account, they represented that the production was
14 complete.

15 Subsequent to our negotiation, they did agree to begin
16 searching that email account for some documents from it.
17 However, in the course of that document production, we learned
18 that she had — Jane Doe had an additional email account that
19 we raised to the attention of plaintiff's counsel and said
20 there appears to be another account here that you need to
21 collect and produce documents from. And we said that despite
22 their having previously represented that they were not aware of
23 an additional account. So they then began to produce documents
24 from that additional account.

25 Then just today, literally an hour before we came

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1 here, we received a production from a third party in response
2 to a third-party subpoena that identified yet another email
3 account belonging to the Jane Doe that we had no idea existed
4 despite, again, numerous representations by plaintiff's counsel
5 that they had given us all of — or collected all the email
6 from Jane Doe's email accounts. So as a threshold matter, your
7 Honor —

8 THE COURT: Let me stop you right there.

9 Let me hear from counsel on that.

10 MR. VALLACASTIN: Good evening, your Honor.

11 We're trying our best. Certainly when we represent —

12 THE COURT: As all judges, I rely on counsel to
13 cross-examine their own clients. The clients, being, of their
14 nature, very protective in a litigation context, are often not
15 as forthcoming with their lawyers as they should be, even
16 though, of course, what they say is protected by privilege.
17 But my experience is, notwithstanding privilege, clients tend
18 to not provide all the information that counsel needs to be
19 responsive to their adversaries and the Court, except upon
20 heavy pressure from the lawyers. So it sounds like you really
21 need to push Jane Doe. Did you ask her for her emails, or did
22 she only say, all I've got is one and I've been locked out or
23 whatever and not reveal the other two?

24 MR. VALLACASTIN: Yes, that's correct, your Honor. So
25 we have —

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1 THE COURT: Have you now asked her about the other
2 two?

3 MR. VALLACASTIN: We've asked several times and she's
4 confirmed all three —

5 THE COURT: What does she say?

6 MR. VALLACASTIN: She only recalled the gmail one
7 first; the second account is an iCloud account, which I think a
8 lot of people here don't realize that they have because it's,
9 you know, just a function of having —

10 THE COURT: So it may have been an innocent mistake.
11 But when you're questioning her, you need to say, and by the
12 way, do you have an iCloud account, do you have this, do you
13 have that? And really push her hard. I'm sure you know that.
14 I don't mean to be preachy about this. It's just that in case
15 after case, I've seen situations where, precisely because of
16 the close relationship between a lawyer and his or her clients,
17 the tight, tough questioning has not occurred. So I encourage
18 you to do that and supply, obviously, the results to your
19 adversary.

20 MR. VALLACASTIN: Yes, your Honor. I appreciate that.

21 THE COURT: Very good.

22 MR. TODRES: And your Honor, to that point, the second
23 issue does relate to results. So we do not believe that there
24 has been a reasonable search conducted of the email that has
25 been collected, setting aside the email that has not been

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1 collected. Originally plaintiff's counsel proposed to use a
2 sum total of 11 search terms to search plaintiff's email, three
3 of which were actually terms related to JPMorgan that had, as
4 far as we know, nothing to do with our case, and over the
5 course of discussions, we asked — we did the work for them and
6 prepared, to the best of our ability, search terms for them to
7 run. And I should add that of those 11 search terms, they
8 didn't include, for instance, the word "Jeff," as in Jeffrey
9 Epstein, they didn't include "Maxwell," they didn't include any
10 of the co-conspirators save for a few exceptions that are
11 identified in plaintiff's complaint, and I think your Honor
12 should be aware that what we have learned so far in this case
13 is that plaintiff had thousands of communications with Jeffrey
14 Epstein, was part of his inner circle, and had very regular
15 communications with numerous people in the complaint identified
16 as co-conspirators. So these are issues that are not only
17 important as to merits but vital as to class certification.

18 THE COURT: Yes.

19 MR. TODRES: So as a result, we proposed a number of
20 additional search terms and said to them that we expected in
21 good faith that they would run standard variations on the
22 search terms. So for instance, if you run the search term for
23 the name Jean-Luc Brunel, who is an individual identified in
24 the complaint as having assisted in Epstein's —

25 THE COURT: No, no, no. I think it's your job to give

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1 them all the terms you want, and I don't think you can rely on
2 them to say, you asked for Jeffrey and we also have to do Jeff.
3 You have to say you want Jeff. But once you say that, if they
4 improperly refuse, of course, come to me, because they'd be in
5 deep trouble.

6 MR. TODRES: Well, they have now — we have, since
7 this discussion, have provided them with a more fulsome list of
8 terms.

9 THE COURT: Okay.

10 MR. TODRES: And we would ask — we have not received
11 a commitment that they are going to run and produce results of
12 those terms, which we find particularly troubling.

13 THE COURT: Well, let's deal with that.

14 MR. VALLACASTIN: Your Honor, with apologies again,
15 things are moving really fast in this case. My update for you
16 is we have reviewed every document hitting the terms that
17 Mr. Todres provided us yesterday, as well as on March 1st. In
18 total, just so the Court is aware, there are 408 search terms.
19 We have produced all but 10, which, you know, I have an email
20 that I have to respond to to release, either today or tomorrow,
21 depending on whether we can access the new email address —

22 THE COURT: So if I understand what you're saying,
23 you're not objecting to the new terms; it's just you're working
24 your way through it.

25 MR. VALLACASTIN: We are almost finished, your Honor.

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1 It's the new email address that we have to run the terms. Just
2 to explain our approach in the beginning, it's not the number
3 of terms, not to get into the details of e-discovery —

4 THE COURT: It sounds to me like I'm glad we had this
5 discussion, but I think things are moving in the right
6 direction. I will just say this, so you're all aware of it.
7 If the case goes to trial or to an evidentiary hearing on some
8 prior motion and I learn that a party has not produced a
9 document that is reasonably within any fair reading of what
10 they agreed to produce, I will impose sanctions. And you won't
11 like the sanctions. The sanctions could be things like
12 striking your case. So be aware of that consequence. But
13 sounds like everything is proceeding favorably and so I don't
14 think there's anything I need to rule on tonight.

15 MR. EDWARDS: Your Honor, in the spirit of saving the
16 most important issue for last, we have requested and had many
17 telephone calls about the SARs that were filed by JPMorgan or
18 Deutsche Bank, the timing of them, and we are told — at least
19 I'm under the impression there's no objection to turning them
20 over but they're just not permitted to turn them over without
21 the permission of FinCEN, the regulatory agency, to produce the
22 SARs.

23 THE COURT: I think unless someone tells me I'm wrong,
24 I think this Court has the power to override that, and I just
25 now decided I will.

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1 MR. EDWARDS: Thank you, your Honor. Yes.

2 MR. BUTTS: Respectfully, your Honor, I don't think
3 that's right.

4 THE COURT: You don't think I have that power?

5 MR. BUTTS: It's a statutory obligation and so I fear
6 of being put in the betwixt and —

7 THE COURT: This is FINRA?

8 MR. EDWARDS: FinCEN.

9 MR. BUTTS: FinCEN.

10 THE COURT: FinCEN. Yeah. So this will be really
11 fun. Explain to them that if they still object to your turning
12 those over, that we will conduct a hearing in my court, that
13 they must appear in person, at a time and place set by the
14 Court but no later than next week, and I will want present not
15 only a lawyer but a decision-maker, if necessary, the highest
16 decision-maker, to explain why they haven't consented, if they
17 haven't, and if that person is not willing to appear, then I'll
18 have no choice but to ask the U.S. Marshals to arrest that
19 person and bring them before me for that hearing. So they may
20 want to consent. But just a thought.

21 MR. BUTTS: We'll deliver that message.

22 MR. EDWARDS: Thank you, your Honor.

23 MS. SINGER: Your Honor, related to that, the U.S.
24 Virgin Islands has previously been authorized to receive this
25 information but there has been a holdup in getting an

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1 authorization for us in this litigation, so we'd ask that that
2 be included within the frame of what FinCEN has to —

3 THE COURT: Yes. Even though I beat the drums there,
4 my experience is from prior cases that the government, once
5 they know the situation, will be very happy to comply, and I
6 can't imagine that they would not comply, but if they can't and
7 don't want to — and I'm not sure, by the way, that I don't
8 have the power to overrule that, but it will be an interesting
9 question. The Supreme Court has so few good issues this day,
10 that will be another one for them.

11 MR. EDWARDS: Your Honor, in the interim, the problems
12 that this has caused, I'm hoping we can alleviate that as well.
13 For instance, there's telephone discussions where we, the Does,
14 have to jump off the calls so these BSA matters could be
15 discussed; depositions, including the Erdoe deposition
16 yesterday, when we had to leave the room so that certain
17 questions could be asked and we were not able to hear those
18 things. There's a deposition set for Jeff Staley next week. I
19 would just ask that there isn't a circumstance where we're
20 kicked out of the room any longer.

21 THE COURT: So there again, here's how I handle that.
22 When that situation comes up in a deposition, you should
23 jointly call me, right there, from the deposition. And if I'm
24 not on the bench, I'll hear you right then and there. If I am
25 on the bench, my clerk will inform you to call back in the next

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1 break in whatever I'm doing on the bench, and so I'll resolve
2 it. It always makes much more sense to resolve those things
3 right then and there rather than, you know, waiting for later.

4 MR. EDWARDS: Thank you, your Honor. I appreciate it.

5 MR. TODRES: And your Honor, I just have one more
6 issue to address from our prior discussion.

7 THE COURT: Yes.

8 MR. TODRES: We had asked for medical releases in
9 respect of the medical records for our Jane Doe. We've asked
10 for them dating back to — I don't know — probably a month ago
11 now, and the third party that we received documents from today
12 actually had a document production ready to go to us last week,
13 and they said the only reason they couldn't make it was because
14 they had not obtained the release from plaintiff. And so we
15 have seen unexplained delay in providing us documents that,
16 again, we believe are critical to not only merits issues but
17 class certification issues, and we'd ask that plaintiffs be
18 required, as they committed to do, to provide all medical
19 records and releases as soon as possible because we cannot
20 afford this repeated delay.

21 THE COURT: Any problem?

22 MS. SINGER: No, your Honor.

23 THE COURT: All right. Well, this was fun. Anything
24 else?

25 Well, if there is nothing else, I notice that most of

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1 the audience has wimped out long ago, but there are a few
2 stragglers still here. So in all seriousness, I thank all of
3 you for this very helpful conference.

4 ALL COUNSEL: Thank you, your Honor.

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